

VOL. IX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,

Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York on March 11, 2013.

APPEARANCES:

AARON J. MANGO,
Assistant United States Attorney,
ROCKY PIAGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,
JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.
(716)332-3560

1 I N D E X

2 WITNESS PAGE

3 LARRY SITZMAN
4 Direct Examination by Mr. Mango 1833
Cross-Examination by Mr. Linsin 1953

5

6 GOVERNMENT EXHIBITS EVD.

7 113 1925
3521.20 1958
8 92 1967
3560.45 2010
9 3560.13 2035

10

11 DEFENDANTS' EXHIBITS EVD.

12 F 1981
13 III and G 1990
I 2001

14

15

16

17

18

19

20

21

22

23

24

25

1 (Jury seated.)

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURY: Good morning.

5 THE COURT: Good to see you again. Ready
6 for another week? Okay. Please have a seat.

7 Okay, Miss Labuzzetta, if you would call the
8 case.

9 THE CLERK: Criminal case 10-219, United
10 States of America versus Tonawanda Coke and Mark
11 Kamholz.

12 THE COURT: Okay. And, ladies and
13 gentlemen, as you can see, the attorneys and
14 parties are back present this morning. We have
15 Mr. Mango and Mr. Piaggione, and we have the
16 paralegal, Miss DiFillipo, and, of course, Robert
17 Conway back there on the government's side.

18 And if you remember, the government has the
19 continuing burden of proof beyond a reasonable
20 doubt on each of the essential elements of the
21 crime charged.

22 And we have two defendants in this case, and
23 you know that Mark Kamholz is here. He's at the
24 far table, along with his attorney Mr. Personius.
25 And we have Mr. Linsin for the defendant

1 corporation Tonawanda Coke; and back with us, I
2 think, chipper and ready to go forward is Jeanne
3 Grasso, and she's back here. And at the same table
4 is Paul Saffrin, who is the president of Tonawanda
5 Coke, and off to the right is Miss Henderson, who's
6 the paralegal for the defense, and Ariel Glassner,
7 who gave up his seat from last week to go back to
8 where he started from. And I think with everybody
9 here we're ready to proceed. And -- yes,
10 Mr. Linsin?

11 MR. LINSIN: Your Honor, I believe -- I
12 don't know if the jurors have their notebooks yet,
13 and I was hoping --

14 THE COURT: Okay. Thank you. I'm not
15 sure the door opens from the -- oh, yeah, it does.
16 I thought maybe you had locked yourself in there,
17 but no such luck, right?

18 Okay. Now that we've accomplished that --
19 thank you, Mr. Linsin -- I think government's ready
20 with its 14th witness, by my account, so --

21 MR. MANGO: Yes, your Honor, the 14th
22 witness, the government calls Larry Sitzman.

23 THE COURT: All right, Mr. Witness, if you
24 would approach the witness box, and I'll tell you
25 when to stop, and it's probably right about now.

1 Don't enter yet. If you'd face the jury, please,
2 that would be helpful. Thank you.

3 L A R R Y S I T Z M A N, having been duly sworn as
4 a witness, testified as follows:

5 THE COURT: Thank you. Okay. You just
6 KO'd the microphone, and we'll see how we go from
7 there.

8 A couple of preliminary instructions, please.
9 Please keep in mind that you're here to testify for
10 the benefit of the ladies and gentlemen of the
11 jury. What works best, I think, is if you speak in
12 a conversational tone. Speak at the microphone.
13 It's friendly. It should pick you up with no
14 difficulty. If you look in the direction of the
15 ladies and gentlemen of the jury, that's helpful.

16 Please don't answer a question that you don't
17 understand. Simply ask the attorneys, or me if I'm
18 questioning you, to repeat the question.

19 Try not to volunteer information. That's what
20 usually complicates things. If you can do a yes or
21 a no answer to a question, that enables us to go
22 forward more expeditiously.

23 If there's an objection, wait until I rule on
24 the objection, and then I will give you further
25 instructions, either complete your answer, wait for

1 the next question, or something similar to that.

2 Do you understand?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Okay. I think you're going to
5 carry pretty well. Speak at the microphone, state
6 your full name, spell your last name, please.

7 THE WITNESS: My full name is Larry
8 Sitzman. Last name is S-I-T-Z-M-A-N.

9 THE COURT: Okay. Your witness,
10 Mr. Mango. Thank you.

11 MR. MANGO: Thank you, your Honor.

12 DIRECT EXAMINATION BY MR. MANGO:

13 Q. Good morning, Mr. Sitzman.

14 A. Good morning.

15 Q. Are you currently employed, Mr. Sitzman?

16 A. Yes, I am.

17 Q. How are you employed?

18 A. I'm employed by the New York State Department
19 of Environmental Conservation.

20 Q. And how long have you been employed with the --
21 can we call that the DEC?

22 A. Yes.

23 Q. How long have you employed with the DEC?

24 A. 25 1/2 years, approximately.

25 Q. What is your current position that you're in?

1 A. My current position, I work in the Albany
2 office of the DEC. I'm the director of the Bureau
3 of Air Quality Surveillance for the Division of Air
4 Resources.

5 Q. So you work out of Albany?

6 A. Yes.

7 Q. How long have you been in that position?

8 A. I've been in that position approximately two
9 and a half years.

10 Q. And if you can tell the jury, please, what are
11 your duties in that position?

12 A. My duties -- my duties now are to manage the
13 operation of New York State's ambient air quality
14 monitoring network. It's required by federal
15 regulations, and I manage a staff who runs all
16 those monitors and repairs them throughout the
17 state.

18 Q. Okay. Is that what the Bureau of Air Quality
19 Surveillance does?

20 A. Yes.

21 Q. And how many staff members do you oversee?

22 A. About 44 throughout the state.

23 Q. All right. Have you held any other positions
24 with the New York State DEC?

25 A. Yes, I have.

1 Q. All right. If you can describe for the jury
2 what other positions and how long, approximately,
3 you've held those.

4 A. Okay. I started with DEC in 1987 in the Albany
5 office as an assistant environmental engineer. I
6 worked for the Division of Air Resources in the
7 Bureau of Stationary Source Control. That's the
8 bureau that basically does all the permitting
9 activities, assists the regions in doing permitting
10 of air pollution sources throughout the state. I
11 was there for about two and a half years.

12 Had an opportunity to transfer back to the
13 Buffalo office, and I took that. In 1990 I came to
14 the Buffalo office in the Division of Water as an
15 assistant engineer. I did wastewater -- inspected
16 and permitted wastewater treatment plants for about
17 a year and a half.

18 Then in the summer of 1991 I took my
19 professional engineer's exam and passed and had an
20 opportunity to go to the Division of Air Resources,
21 which was my first love, so I went back to that.
22 And I spent the next 18 1/2 years in various
23 capacities in the Division of Air in the Buffalo
24 office from senior -- from -- well, I was still
25 assistant engineer until I got my license, for a

1 short time. Then senior engineer doing permitting,
2 compliance inspections, and enforcement responding
3 to complaints. And in 2000 I was named -- got a
4 promotion. I was named regional air pollution
5 control engineer, where I was in charge of the
6 entire operation of the region for the air program.

7 And in October of 2010 I left and got a
8 promotion and went back to Albany.

9 Q. Okay. So in total how long were you in the
10 Buffalo office?

11 A. Twenty years.

12 Q. And you mentioned from -- a period of time of
13 from 1991 to 2000 you were in what position?
14 Senior engineer?

15 A. I was -- yeah, for the brunt of the time I was
16 a senior engineer.

17 Q. Have you heard the term "Environmental Engineer
18 II"?

19 A. Yes. That was my title. My civil service
20 title was Environmental Engineer II. It had
21 changed over time. When I started, it was
22 assistant and senior engineer, and so I never got
23 used to the new -- now we're called Environmental
24 Engineers I, II, III, IV, whatever, but --

25 Q. Okay. So between 1991 and 2000 you were an

1 Environmental Engineer II?

2 A. Correct.

3 Q. Okay. Can you describe for the jury what your
4 job duties were as an Environmental Engineer II
5 during that time period?

6 A. I was assigned air pollution facilities,
7 industries. I wrote permits for those facilities.
8 I inspected them for my assigned facilities. I
9 took enforcement actions as necessary. I responded
10 to general air pollution complaints.

11 Throughout that time in -- in the -- in 1990
12 the Clean Air Act was amended, and that brought on
13 for my type of work the Title V permitting program.
14 I was the lead in the region on doing outreach.
15 The department and our region in particular was
16 very proactive in giving presentations on the new
17 requirements of the Clean Air Act. We were
18 learning along the way too, so we wanted to do a
19 lot of outreach with industry to talk about the new
20 requirements so we could implement -- implement
21 things as they came along. And I did many talks
22 throughout that time period while I was a senior
23 engineer.

24 Q. Okay. So you mentioned some of your duties
25 were inspection related --

1 A. Yes.

2 Q. -- is that right? How frequently -- if you can
3 tell the jury, how frequently did you conduct
4 inspections in that role?

5 A. In those days it was probably weekly I was
6 going to some facility on an inspection.

7 Q. Okay. What types of facilities would you
8 inspect?

9 A. Oh, boy, a lot of different types, from auto
10 body shops, to medical waste incinerators, to
11 chemical plants, to coke ovens. Some of the names
12 Buffalonians may remember is Buffalo Color
13 Corporation, Bethlehem Steel. Those were my type
14 of facilities.

15 Q. Okay. So you did conduct inspections at
16 Bethlehem Steel?

17 A. Yes. I had two responsibilities there, the bar
18 mill -- Bethlehem Steel still operated -- three
19 responsibilities, actually -- the bar mill; they
20 operated the galvanizing mill they operated still;
21 and the coke plant that was still in operation in
22 those days.

23 Q. Okay. During your inspections of the coke
24 plant -- did you do inspections of that part, the
25 coke plant?

1 A. Yes.

2 Q. Okay. During your inspections what was the
3 focus of your inspections of the coke plant at
4 Bethlehem Steel?

5 A. My focus was in those days the -- the battery.
6 The coke battery was in great disrepair. I guess
7 I'll put it that way. And there was a new Clean
8 Air Act requirement that dealt with emissions from
9 the coke battery. In 1994, I believe, that came
10 out, so I started at that plant in 1993. So that
11 was generally my big focus, although there was a
12 by-products part of the plant that had
13 requirements, but I spent much more time at the
14 battery.

15 Q. Okay. If you can tell the jury, just typically
16 how long did your inspections last in this position
17 as Environmental Engineer II, or if it varied, if
18 you can tell the jury, you know, why it varied.

19 A. It really varies. If you go to a plant in
20 response to a complaint, it could be as little as
21 15 minutes. You could be there all day, too,
22 depending on what you were there to inspect, and if
23 it was just one item at the plant or an entire
24 plant inspection.

25 Q. Okay. Did your inspections involve viewing

1 every emission source at a particular facility?

2 A. Not typically.

3 Q. Okay. If you can tell the jury, during your
4 inspections if you noticed a violation, what would
5 you -- what would you do?

6 A. If I noticed -- if I noticed a violation, I
7 knew it was a violation, my standard procedure was
8 to inform the facility that there was a violation
9 that I saw during the inspection. We'd have to
10 deal with that one way or another.

11 Q. Okay.

12 A. If I -- go ahead.

13 Q. If you're on-site -- we just can't overlap too
14 much.

15 A. Yes.

16 Q. If you're on-site and you notice a violation,
17 what would you do?

18 A. I would typically tell the plant that they had
19 a violation. I think it's very important to let
20 facilities know what you're seeing during an
21 inspection and if there's a violation you find or
22 not.

23 Q. Okay. Were there times when you thought maybe
24 something was a violation, but you wanted to go
25 back and research it more?

1 A. Oh, absolutely. You know, there's times you
2 might have to really look into a regulation or go
3 back through the file and find out if there was a
4 violation.

5 Q. All right. Now, in your job duties, you
6 discussed duties relating to permit writing and
7 review, is that right?

8 A. Yes.

9 Q. Can you tell the jury what duties you had
10 relating to permit writing and review as an
11 Environmental Engineer II?

12 A. As an Environmental Engineer II, I reviewed
13 permit applications submitted by facilities and
14 wrote a permit based on that. In the -- when I was
15 first in that title, we had our old permitting
16 system, which was each emission point at a
17 facility, any place the emissions came out,
18 required a permit, and an application would be
19 submitted, and we -- on that application we would
20 write the requirements for the permit and have the
21 permit issued and sent back to the facility.

22 The Clean Air Act changed all that from an
23 emission-point permit to a facility basis, so we
24 would get an application in, again, that would
25 include all of the information for the facility,

1 and write the permit based on that.

2 Q. All right. So you would review permit
3 applications as part of your duties?

4 A. Yes.

5 Q. Okay. In the course of your work as an
6 Environmental Engineer II, how many permit --
7 permit -- how many permit applications would you
8 review or do you recall reviewing in your time?

9 A. Oh, I reviewed hundreds of applications.

10 Q. And as an Environmental Engineer II, were you
11 involved in writing permits?

12 A. Yes.

13 Q. Okay. How many permits were you involved in
14 writing?

15 A. As in the old permit system, where it was
16 emission point by emission point, it would be
17 hundreds. One of my facility had 500 emission
18 points. There was a lot of permits. As Title V
19 came on, I -- when I was still an Environmental
20 Engineer II, I wrote -- I wrote just a handful of
21 permits myself.

22 Q. Title V permits?

23 A. Title V permits.

24 Q. So you started to discuss the regulatory scheme
25 in New York that addresses air permits, is that

1 right?

2 A. Yes.

3 Q. All right. You're familiar with the regulatory
4 scheme in New York?

5 A. Yes.

6 Q. Okay. Let's talk a little bit about your job
7 duties as Regional Air Pollution Control Engineer.
8 Okay. Is that also called a RAPCE?

9 A. Yes.

10 Q. If you use that term, so the jury knows. If
11 you could tell the jury, what you were your duties
12 as Regional Air Pollution Control Engineer?

13 A. As Regional Air Pollution Control Engineer, I
14 was in charge of the environmental staff for the
15 Division of Air Resources in the regional office.
16 I would make sure we met all the requirements for
17 the Clean Air Act in our region. I had, as an
18 Environmental Engineer II, supervised some staff.
19 I continued -- our staff was shrinking at the time.
20 I continued providing that service, so as part of
21 those duties I reviewed the permits they wrote,
22 because I had been doing that for quite some time.

23 And then part of my duties also were -- for all
24 large facilities, once a year we had to assure that
25 every one of them, that every item that was

1 required throughout the year was completed. And so
2 every one of those facilities, there was a form
3 turned in by the staff in charge of that facility I
4 had to review and make sure everything was done,
5 sign it, and enter it into our computer system.

6 Q. How were you selected to become Regional Air
7 Pollution Control --

8 A. Through civil service test and interviews.

9 Q. And how many staff -- or if it changed, tell
10 the jury how many staff at one point you supervised
11 and how that may have changed.

12 A. When I became RAPCE, we had 18 staff in
13 Region 9. When I left in 2010, it took it down to
14 10 staff.

15 Q. And what positions did these individuals hold
16 that you supervised?

17 A. The -- the main titles were Environmental
18 Engineering Technician, Environmental Program
19 Specialist, and Environmental Engineer, through
20 various categories and various levels of detail in
21 those titles, I, II, III, just the same as the
22 engineers I described earlier.

23 Q. Okay. And what were the principal differences
24 between a technician, a specialist, and an
25 engineer?

1 A. Typically the facilities vary in complexity
2 throughout the state, so -- or throughout the
3 region. So, typically, environmental engineering
4 technicians would assist engineers in inspections
5 of large facilities and may -- maybe actually have
6 their own very small facilities that they're
7 responsible for all compliance.

8 Program specialists and lower-level engineers,
9 as they -- as they got more knowledge in the
10 system, they would get more complex facility --
11 assigned more complex facilities. And typically
12 the most seasoned staff, most knowledgeable staff,
13 did the most complex facilities in the region.

14 Q. Did you have any public outreach
15 responsibilities as Regional Air Pollution Control
16 Engineer?

17 A. Yes. I continued those responsibilities as
18 RAPCE, from being a senior engi -- or Environmental
19 Engineer II.

20 Q. Okay. And as a Regional Air Pollution Control
21 Engineer, did you have any role in the oversight of
22 a company known as the Tonawanda Coke Corporation?

23 A. I was in charge of the whole region, and yes, I
24 had responsibility for every facility.

25 Q. Are you familiar with that company?

1 A. Yes, I am.

2 Q. All right. Was there a time when your focus on
3 the Tonawanda Coke Corporation increased?

4 A. Yes.

5 Q. When was that?

6 A. I would say around -- well, it was after --
7 late 2007, early 2008, we conducted a project in
8 our region in the Tonawanda area. From -- it
9 really started -- we really started learning about
10 the issue in 2005. Samples were taken, by a
11 community group, of air. We started investigating
12 the results of those samples when they presented
13 them to us. We went out and took our own samples
14 after that and confirmed some of the short-term
15 sampling with longer sampling.

16 That led to us applying for a grant through
17 EPA, and we received -- I think it was \$365,000, to
18 do an air quality study around Tonawanda. And we
19 spent about that much ourselves as New York State.
20 Worked hand in hand with our Albany office, where
21 the real technical experts on air monitoring were
22 located.

23 Completed that study. One of the big issues
24 was benzene. There's several facilities that emit
25 benzene in the Tonawanda area, the Tonawanda

1 industrial area on River Road, and we started
2 investigating those facilities to see where there
3 may be possible sources of benzene.

4 Q. Okay. And one of those facilities you began to
5 focus more on was Tonawanda Coke, is that right?

6 A. Yes.

7 Q. Was there a contact person at Tonawanda Coke
8 that you dealt with?

9 A. Yes.

10 Q. All right. Who was that?

11 A. Mark Kamholz.

12 Q. And, Mr. Sitzman, do you see Mr. Kamholz here
13 in court?

14 A. Yes, I do.

15 MR. MANGO: Your Honor, may the record
16 reflect Defendant Kamholz has stood up and the
17 witness has identified him?

18 THE COURT: Yes. The record will reflect
19 the identification of Defendant Mark Kamholz.

20 MR. MANGO: Thank you, your Honor.

21 BY MR. MANGO:

22 Q. Mr. Sitzman, do you have any type of particular
23 educational background that qualified you for the
24 position of Regional Air Pollution Control
25 Engineer?

1 A. I have a Bachelor's of Science degree in civil
2 engineering from the University of Buffalo, I
3 received in 1980, and I've taken many air pollution
4 training courses throughout the years.

5 Q. And what types of air pollution training
6 courses, if you can tell the jury, would you -- did
7 you take?

8 A. One of the typical ones we take quite often is
9 training to read the opacity of smoke or the
10 darkness of smoke coming out of a stack.
11 Inspectors have to be certified every six months in
12 the EPA methods to be able to read that smoke. So
13 we -- most staff went through that. As I became
14 RAPCE, I did that less and less, because I had
15 other duties and didn't maintain my certification.

16 But throughout my career I took courses in
17 various industrial activities, in permitting
18 strategies, in enforcement strategies, in air
19 pollution control equipment design and inspection,
20 in hazardous waste incineration, in medical waste
21 incineration. Continued taking courses throughout
22 my career.

23 Q. Do you hold any type of professional license,
24 Mr. Sitzman?

25 A. Yes. I'm a licensed New York State

1 professional engineer.

2 Q. Are you a member of any professional
3 associations?

4 A. Yes. I'm a member of the Air and Waste
5 Management Association.

6 Q. All right. Let's talk -- you've mentioned the
7 term "the Clean Air Act." Are you familiar with
8 the Clean Air Act?

9 A. Yes, I am.

10 Q. How are you familiar with the Clean Air Act?

11 A. I have familiarity with the act itself, which
12 is the federal law, and familiarity with the
13 implementing regulations that EPA developed to
14 implement the Clean Air Act.

15 Q. Okay. Can you tell the jury, briefly, what is
16 the Clean Air Act?

17 A. The Clean Air Act is a federal law that was
18 first established, I think, in 1970. I don't
19 remember the exact date. Was amended a couple
20 times. The most recent amendment was 1990, the big
21 amendment that really changed the way we looked at
22 air pollution. There's many sections of it, many
23 titles of the Clean Air Act. There's some titles
24 I'm not very familiar with. There's titles on
25 cars, for instance, mobile sources. I don't deal

1 with that. We have other people that deal with
2 that.

3 I'm more familiar with the parts of the Clean
4 Air Act that deal with industrial permitting and
5 compliance issues and regulation development.

6 Q. Is there something in the Clean Air Act known
7 as Title V?

8 A. Yes, there is.

9 Q. Are you familiar with Title V of the Clean Air
10 Act?

11 A. Very familiar.

12 Q. How have you gained this familiarity with
13 Title V?

14 A. Reading it and working with it.

15 Q. Okay. How long have you been working with the
16 Clean Air Act or Title V?

17 A. Title V, you know, the amendments came out in
18 1990. We started working on our implementation of
19 the Clean Air Act at that point. We had to
20 write -- we had to completely rewrite our
21 permitting regulation at the time, to put in the
22 requirements for Title V.

23 Q. So, Mr. Sitzman, are you familiar with the
24 permitting scheme under Title V?

25 A. Yes.

1 Q. And can you describe in general terms what that
2 permitting scheme is?

3 A. In -- in general terms, Title V required that
4 every facility that was covered under Title V,
5 which in our case was large facilities -- if I can
6 use the term, "major facility" is what we use. It
7 depends on your -- the level your emissions are.
8 If your -- if you have enough emissions, you're
9 considered a major facility and you get a Title V
10 permit.

11 To be complete, I should tell you that we have
12 two other schemes for smaller facilities, one with
13 lower emissions. They're issued a state facility
14 permit, which is similar in look to a Title V
15 permit, but it's facilities that aren't major. For
16 very small facilities we issue a one-page
17 registration that -- for instance, a dry cleaner
18 may get a registration that just says: I'm a dry
19 cleaner and I'm covered under this law. A very
20 general certificate.

21 Title V is for major facilities. What it
22 required is that all sources covered under that had
23 to submit an application. The application had to
24 include all of the information of the plant for
25 every regulated unit at the plant. Had to include

1 all of the regulations. They had to identify all
2 of the regulations that governed those operations
3 in the application, and they had to identify any
4 recordkeeping or monitoring requirements that may
5 have not been precisely in a regulation, but the
6 monitoring methods they would use to show they were
7 in compliance at the facility.

8 And that application was then signed and
9 submitted by the responsible official at the
10 facility, and it comes in -- at DEC we have a unit
11 called the Environmental Permits Unit. They
12 basically issue all the permits for DEC, no matter
13 what program. So any permit application is
14 submitted through them. They receive it, send it
15 off to a key punch contractor who key punches the
16 application into digital format, sends a disc back
17 to us. It gets entered in our computer system, and
18 we go from there to draft a permit from the
19 application.

20 Q. Okay. So from 1990 all the way up through your
21 position as Regional Air Pollution Control
22 Engineer, have you dealt with Title V?

23 A. Yes.

24 THE COURT: Now, you testified, I believe,
25 earlier, though, that you only wrote a handful of

1 Title V permits, correct?

2 THE WITNESS: I only wrote a handful, yes.

3 BY MR. MANGO:

4 Q. Have you heard of the -- you started to
5 discuss, Mr. Sitzman, the -- the state
6 requirements, two additional non-Title V permits.

7 A. Yes.

8 Q. Before we get there, do you know if New York
9 State is delegated to implement the Title V?

10 A. Yes, New York State -- every state had to
11 receive -- I don't think it's really called
12 delegation, but I'm going to forget the exact term.
13 But every state had to be approved by EPA to write
14 Title V permits. And it was a whole program, not
15 just a permitting part, but legal requirements that
16 the State had to meet legal obligations too, so
17 some state laws had to be changed, for instance.
18 So it was a whole package, and I think it was 1996
19 New York received interim approval of our Title V
20 program and could start writing permits, and I
21 think it was 2000 or 2002 that we got final
22 approval of our complete program.

23 Q. All right. Now, prior to Title V, can you
24 describe -- and you've already touched on it
25 briefly -- can you describe the permitting scheme

1 in place prior to Title V in New York State?

2 A. Sure. It was -- as I said earlier, it was
3 emission point permits, and each emission point at
4 a facility needed a permit. What I mean by that is
5 anything generally that emitted air contaminants --
6 air pollutants, that's a better term -- would need
7 to apply for a permit with us.

8 Our permitting regulation contained exemptions,
9 so people may apply for a permit and be exempt, and
10 we would never have to issue one. But generally,
11 since I've been doing this work, any air pollution
12 source, emission point that emitted air pollutants
13 or air contaminants, needs a permit.

14 Q. Okay. Have you heard the term Air 100?

15 A. Yes.

16 Q. Okay. What is that?

17 A. Air 100 is the form we used to issue those
18 emission point permits. It was an application that
19 a facility would complete, submit to us, we would
20 review that application along with any other
21 associated documents submitted with that form,
22 include the regulatory requirements then on the
23 application, and there was places for the permit to
24 be issued.

25 Q. In your career at DEC in the various positions

1 that you've held, have you reviewed Air 100s?

2 A. Many times.

3 Q. How many would you say?

4 A. That's where it's hundreds.

5 Q. Are you familiar with Title 6 of the New York
6 Code Rules and Regulations, which we may call
7 NYCRR?

8 A. Yes.

9 Q. And Subparts 200, 201 and 214?

10 A. Yes.

11 Q. How familiar are you with these subparts?

12 A. Very familiar.

13 Q. Okay. What does Subpart 200 deal with?

14 A. 200 is our -- Part 200 is our general
15 definitions, general provisions for the air
16 pollution program. It also contains references to
17 all of the federal regulations that we have
18 delegation to enforce in New York State.

19 Q. Okay. Part 201, what does that deal with?

20 A. Part 201 is our permitting regulation that
21 contains all the requirements for required permits
22 applications, and all the requirements for who
23 needs to apply for a permit.

24 Q. And Subpart 214, what does that deal with?

25 A. Subpart 214 regulates coke-making operations.

1 Q. All right. Now, in your position as regional
2 air pollution control engineer, did your -- did
3 your -- when I last asked you the question, I was
4 focused solely when you were an Environmental
5 Engineer II regarding permit writing and review.
6 When you became RAPCE, did those duties increase?

7 A. The review part increased, yes. My writing of
8 permits, I no longer wrote permits myself, but I
9 assisted staff in writing permits, and for several
10 staff I reviewed their permits before they were
11 sent out as a draft permit for public notice.

12 Q. Okay. Did you ever work with staff members to
13 interpret conditions of a permit?

14 A. Constantly.

15 MR. MANGO: Your Honor, at this point,
16 based on Mr. Sitzman's experience with DEC,
17 educational background, familiarity with the Clean
18 Air Act, Title V, and the New York Codes, Rules and
19 Regulations, the government would offer Mr. Sitzman
20 as an expert in those areas of the Clean Air Act,
21 Title V, permitting scheme, and the implementation
22 of New York Codes, Rules and Regulations.

23 THE COURT: Okay. Any objection?

24 MR. LINSIN: No objection, your Honor.

25 MR. PERSONIUS: No, your Honor.

1 THE COURT: Okay. Ladies and gentlemen,
2 you may consider the testimony of Mr. Sitzman with
3 respect to areas that will call upon his expertise
4 as an expert witness in the defined areas that
5 Mr. Mango has mentioned. You are to judge the
6 credibility, the believability of the witness just
7 like you do everybody else who testifies.
8 Mr. Sitzman's being called because of the special
9 knowledge that he has that might be of assistance
10 to you in working through his testimony relative to
11 areas that he may be called upon to give an expert
12 opinion.

13 Because he is an expert, if you do have any
14 questions after his testimony is concluded, you may
15 fill out the question form at the back of your
16 notebooks, and then we'll process it and see if
17 those questions or the question will be answered.
18 Okay?

19 You may proceed, Mr. Mango, except that you
20 have to wait for Mr. Personius to add his comments.

21 MR. PERSONIUS: Thank you, Judge. Judge,
22 just in light of the instruction you gave to the
23 jury, which certainly was very appropriate, my
24 understanding is Mr. Sitzman is not just here as an
25 expert witness. He's also here as a fact witness.

1 So I just think the jury should know that they're
2 going to hear expert and fact testimony from him.

3 THE COURT: Okay. And, you know, it will
4 be -- it should be made clear to you, ladies and
5 gentlemen, where in those areas Mr. Sitzman is
6 being called to give testimony that would be
7 considered expert testimony relative to the Clean
8 Air Act and various interpretations, and again,
9 that would be based on his expertise. But as noted
10 by Mr. Personius -- and you've heard Mr. Sitzman's
11 name mentioned throughout this case -- he will be
12 called and is being called, once we get through all
13 of the allergies and the sneezes and everything
14 else, as a fact witness in this case as well.

15 All right. I think that happens after a while.
16 The jurors and juries usually develop allergies
17 either to attorneys or witnesses. We never know
18 which. But in any event, bless you. You may
19 continue with that.

20 MR. MANGO: Thank you, your Honor.

21 BY MR. MANGO:

22 Q. Mr. Sitzman, have you reviewed DEC's Division
23 of Air file dealing with the Tonawanda Coke
24 Corporation before testifying here today?

25 A. Yes, I have.

1 Q. And do you know if the Tonawanda Coke
2 Corporation is required to operate pursuant to a
3 Title V permit?

4 A. Yes, they are.

5 Q. Okay. Do they have a Title V permit?

6 A. Yes, they do.

7 Q. And do you know when that Title V permit was
8 issued?

9 A. The permit was issued in May of 2002. It
10 expired in May of 2007. However, it remains in
11 effect. They applied for a permit renewal in a
12 timely fashion, and because of all the issues going
13 on with the plant, we haven't issued a renewal
14 permit until we get everything straightened out and
15 can issue an accurate permit for what requirements
16 will be at the facility when we conclude all the
17 actions.

18 Q. Okay. Prior to the issuance of Tonawanda
19 Coke's Title V permit, was the company regulated at
20 all by the DEC?

21 A. Yes. They had emission point permits.

22 Q. Okay. So these are these Air 100s?

23 A. Correct.

24 Q. And when did the regulation of the Tonawanda
25 Coke facility begin?

1 A. When they purchased the facility in 1978.

2 Q. All right. I'd like to talk about an area
3 now -- are you familiar with the term "pushing
4 controls"?

5 A. Yes.

6 Q. And what does that term mean to you?

7 A. A coke plant -- part of the operation is, once
8 the coke has been produced in the oven, it's pushed
9 out. Pushing it out of the oven can release lots
10 of contaminants. And there is a requirement for
11 certain coke facilities to have pushing controls on
12 their push side of the oven, the coke side, so that
13 when the coke comes out of the oven and all those
14 contaminants come off, they're all collected and
15 treated and just don't go into the atmosphere.

16 MR. MANGO: Okay. At this point I'd like
17 to pull up, your Honor, Government Exhibit 128
18 already in evidence.

19 BY MR. MANGO:

20 Q. If we can just take a look at this document,
21 Mr. Sitzman. It's a multiple-page document. Have
22 you reviewed this document in the past?

23 A. Yes, I have.

24 Q. And what's the date up at the top?

25 A. Date is November 27th, 1979.

1 Q. Let's focus in, actually. November what?

2 A. 17th, 1979.

3 Q. Thank you. And if you could tell the jury,
4 Mr. Sitzman, what -- what is -- what -- what is
5 this document requesting of the DEC?

6 A. This was a letter to -- or is a copy of a
7 letter to our commissioner of DEC at the time,
8 discussing Part 214 and how it related to Tonawanda
9 Coke. This was a relatively -- Tonawanda Coke had
10 just purchased the facility, and there was much
11 discussion, in my looking at the -- through the
12 file back at that time, over the regulatory
13 requirements for this facility in the whole scheme
14 of Part 214.

15 Q. Okay. Mr. Sitzman, do you know, as a result of
16 this letter -- do you know if DEC granted Tonawanda
17 Coke any type of exemption relating to pushing
18 controls?

19 A. The -- after -- after -- after this letter
20 worked its way all through the process and with
21 much discussion with DEC, Tonawanda Coke was issued
22 an exemption. A consent order was issued that
23 exempted Tonawanda Coke from pushing controls in
24 exchange for tighter controls at the facility on
25 another requirement. Another requirement of

1 Part 214 is to control leaks from doors of the
2 ovens, lids of the ovens, and offtakes, and
3 Tonawanda Coke accepted stricter limits on those
4 provisions in exchange for not installing pushing
5 controls.

6 Q. Okay. So as a result of those stricter limits,
7 do you know what was the focus of the DEC
8 inspections at the Tonawanda Coke Corporation?

9 A. We were focused at the time on making sure they
10 met those stricter limits at the battery.

11 Q. And that related to the battery?

12 A. Uh-huh. To the battery.

13 THE COURT: Yes?

14 THE WITNESS: Yes. Yes. I'm sorry.

15 BY MR. MANGO:

16 Q. So, were the DEC inspections similar to Method
17 303 inspections?

18 A. Yes, similar.

19 MR. LINSIN: Your Honor, I just request a
20 clarification on that question and the response.
21 The question was were DEC inspections, and then
22 asked for the witness to characterize them. There
23 are a variety of different types of inspections,
24 and I would ask that we be clear about what we're
25 talking about over the years.

1 THE COURT: Yeah, I think it was were they
2 similar to 303 inspections. So you want a
3 clarification on that?

4 MR. LINSIN: Well, clarification as to,
5 first of all, which DEC inspections we're talking
6 about, and then whether they're similar or not to
7 303 inspections. Yes.

8 MR. PERSONIUS: And forgive me, your
9 Honor. Before we even go down that road, the
10 witness said the focus at the time. If we could
11 have a clarification of what "at the time" is.
12 This may not be relevant.

13 THE COURT: Okay. Well, let's see what
14 you have to say here by way of your redirected
15 questions, Mr. Mango.

16 MR. MANGO: Yes, your Honor.

17 BY MR. MANGO:

18 Q. Mr. Sitzman, you mentioned about similarity
19 with Method 303 inspections?

20 A. Yes.

21 Q. Okay. Were some of the DEC inspections similar
22 to a Method 303 inspection?

23 A. Yes, they were.

24 THE COURT: Let us know a time frame now.

25 BY MR. MANGO:

1 Q. That was the next question, your Honor.

2 Mr. Sitzman, do you know what time period we
3 would be talking about here?

4 A. Well, in the in -- the requirement for a Method
5 303 inspection came out in the federal regulation
6 in 1994 time frame, is where that requirement is
7 included. Prior to that, New York State did those
8 inspections to see if the battery -- the battery,
9 the coke battery, was in compliance with the leak
10 limits of the battery.

11 Q. Okay. So is it fair to say some of the
12 inspections prior to 1993 were focused on the
13 battery?

14 A. Yes.

15 Q. Okay. And how about after 1994 up through,
16 let's say, 2009? Were some of your inspections or
17 some of the DEC inspections focused on the battery?

18 A. Yes.

19 Q. Because of these pushing -- this exemption for
20 pushing controls?

21 A. The -- you know, the rules in 1994, the federal
22 rules, required a third-party inspector daily at
23 the plant.

24 THE COURT: I thought you said that the
25 federal rules were as of 1994, not prior to. What

1 is --

2 THE WITNESS: Sorry if I wasn't clear,
3 your Honor. The regulation of 1994 required that
4 coke facilities hire a third-party inspector.

5 THE COURT: Now, that was a federal
6 regulation?

7 THE WITNESS: Federal, yes.

8 THE COURT: Now, were there federal
9 regulations before 1994?

10 THE WITNESS: No, there was no federal
11 regulations before 1994. It was just Part 214.

12 BY MR. MANGO:

13 Q. Okay.

14 A. Part 214 still exists.

15 Q. Okay. And because of this exemption on pushing
16 controls prior to 1994, were some of your
17 inspections focused on the battery?

18 A. Yes.

19 Q. And even after 1994 when the 303 inspection
20 scheme came into place, was DEC still at a time
21 focused on the battery?

22 MR. PERSONIUS: Your Honor, this has been
23 asked and answered. It's being overemphasized.

24 THE COURT: Well, I'll overrule that
25 objection. You may answer.

1 THE WITNESS: There was focus on the
2 battery, yes, in addition to Part 303 inspections.

3 BY MR. MANGO:

4 Q. Okay. Based on your knowledge of the DEC file,
5 do you know if Tonawanda Coke had any other type of
6 exemption relating to the -- let's say, the quench
7 towers?

8 A. Yes.

9 Q. All right. And you know what quench towers
10 are?

11 A. Yes.

12 Q. All right. Can you tell the jury what your
13 understanding of that exemption relating to the
14 quench tower was?

15 A. Tonawanda Coke has two quench towers. I never
16 remember the numbers, but there's an east tower and
17 a west tower. The west tower, there was an
18 exemption for -- to operate that unit in a standby
19 capacity. The exemption allowed them not to have
20 required baffles in the tower as long as it was
21 used less than 10 percent of the time throughout
22 the year.

23 Q. Okay. Do you know when, Mr. Sitzman, that
24 exemption for the west quench tower was
25 established?

1 A. I think it was in the 1980s.

2 MR. MANGO: All right. Let's take a
3 look -- your Honor, if we could pull up Government
4 Exhibit 19.02 in evidence. And if we can focus on
5 this portion, please.

6 BY MR. MANGO:

7 Q. Mr. Sitzman, do you see this document on your
8 screen?

9 A. Yes.

10 Q. And what is the date of this document?

11 A. September 19th, 1983.

12 Q. All right. It's a -- let's focus starting --
13 well, really, at these two paragraphs. Do you see
14 any discussion regarding quench tower number 1?

15 A. Yes.

16 Q. And --

17 A. That is -- this is a letter, copy of a letter
18 to the RAPCE at the time at DEC in Buffalo, and
19 submitting applications that we talked about, Air
20 100s for certificates to operate, and also asking
21 that baffles -- that we approve an exemption -- an
22 exception to allow them not to install baffles in
23 quench tower 1 due to it being very old and that
24 the -- there would be a significant sum of capital
25 would have to be spent to provide the required

1 baffles.

2 Q. Okay. So, now, does looking at this letter
3 refresh your recollection as to -- you mentioned
4 the west quench tower had an exemption. And this
5 letter talks about quench tower number 1.

6 A. That would be the west quench tower.

7 Q. Okay. And the reason provided by the Tonawanda
8 Coke Corporation is significant sums of capital?

9 A. That's one of the reasons, yes.

10 Q. Do you know, Mr. Sitzman, if this request was
11 approved?

12 A. Yes, it was.

13 MR. MANGO: All right. Your Honor, if we
14 could pull up, please, Government Exhibit 19.17
15 that is in evidence.

16 BY MR. MANGO:

17 Q. Mr. Sitzman, do you see this document on your
18 screen?

19 A. Yes, I do.

20 Q. Okay. And what is the date of this document?

21 A. March 14th, 1984.

22 Q. And what is your understanding of this letter?

23 A. This letter grants -- this is a letter -- copy
24 of a letter to Mark Kamholz at Tonawanda Coke from
25 the RAPCE, approving an exemption for having

1 baffles in quench tower 1 and limiting the use to
2 less than 10 percent of the time. And saying that
3 if things change in the future, we may revisit this
4 exemption, the appropriateness of the exemption.

5 Q. Okay. Based on your -- we've been talking
6 about quench tower number 1, the west quench tower,
7 right?

8 A. Correct.

9 THE COURT: Hold on. I think there's an
10 objection.

11 MR. PERSONIUS: It's not an objection.
12 I'm sorry. I'm trying to figure out the exhibit
13 number, Judge. I'm very sorry.

14 THE COURT: We were at 19.17.

15 MR. PERSONIUS: Right. That's all I need.
16 Thank you. You can't see it on the screen. Thank
17 you.

18 THE COURT: Thank you.

19 BY MR. MANGO:

20 Q. Mr. Sitzman, we have now been talking about
21 quench tower number 1, correct?

22 A. Correct.

23 Q. All right. Based on your knowledge of the DEC
24 file, do you know if Tonawanda Coke had any type of
25 exemption relating to the other quench tower, this

1 east quench tower that you talked about?

2 A. No, they did not.

3 Q. All right. Do you recall receiving a letter in
4 1996 from Tonawanda Coke regarding the east quench
5 tower?

6 A. Yes.

7 MR. MANGO: All right. I'd like to, your
8 Honor, pull up government Exhibit 19.11.1 already
9 in evidence.

10 BY MR. MANGO:

11 Q. Is this -- do you see this on your screen here,
12 Mr. Sitzman?

13 A. Yes, I do.

14 Q. Okay. There's some handwriting in the middle
15 starting with "discussed" there. Do you know whose
16 handwriting that is?

17 A. Well, the initials at the end say GWF, which is
18 Gary Foersch, who was a technician that worked for
19 me at the time. I supervised him.

20 Q. What is being requested in this letter?

21 A. This is a letter to Gary at the department,
22 requesting that -- or informing us that quench
23 tower number 2 had significant deterioration, and
24 asking for removal -- asking to remove the tower
25 portion of the quench station, and providing some

1 information about what the quench tower would look
2 like after the quench station was -- quench tower
3 was modified.

4 Q. Upon receiving this letter, were you involved,
5 Mr. Sitzman, in sending a response letter to
6 Tonawanda Coke?

7 A. Yes. I reviewed Gary's letter in response
8 to -- we talked about it, and I reviewed his letter
9 in response to Tonawanda Coke.

10 MR. MANGO: All right. Your Honor, I'd
11 like to pull up Government Exhibit 19.12 in
12 evidence.

13 BY MR. MANGO:

14 Q. Do you see this document on your screen,
15 Mr. Sitzman?

16 A. Yes, I do.

17 Q. Was there a paragraph included in this letter
18 regarding baffles?

19 A. Yes. It's the third paragraph in the letter.
20 It says, "It should also be noted that Part 214.5A
21 requires that all wet quench towers be equipped
22 with a baffle system."

23 Q. Okay. Why was this paragraph -- did you have
24 any role in including this paragraph --

25 A. I -- I at the time --

1 THE COURT: Yeah, hold on, please.

2 THE WITNESS: I'm sorry.

3 BY MR. MANGO:

4 Q. You got to let me finish, Mr. Sitzman.

5 Otherwise the record is impossible.

6 Did you have any role in including this
7 paragraph in the letter?

8 A. Yes, I did.

9 Q. Okay. Why was this paragraph about baffles
10 included?

11 A. I talked to Gary at the time and asked that he
12 put that sentence in just to be clear with the
13 company that baffles were required.

14 Q. Okay. Under Part 214.5A?

15 A. Correct.

16 Q. What did that require?

17 A. Required baffles for any wet quench tower.

18 Q. All right. Now, based on your review of the
19 Tonawanda Coke file, is there any correspondence or
20 documents, Mr. Sitzman, after this letter,
21 indicating that Tonawanda Coke was using quench
22 tower number 2 without baffles?

23 A. Not until inspection reports in 2009.

24 Q. Okay. We're talking about an April of 2009
25 inspection?

1 A. Correct.

2 Q. Prior to April of 2009, up to the point of this
3 letter in 1997, in that time period, is it fair to
4 say that there's no correspondence or documents in
5 the file indicating that Tonawanda Coke was using
6 quench tower number 2 without baffles?

7 MR. PERSONIUS: Your Honor, I object.
8 It's been asked and answered.

9 MR. MANGO: Your Honor, I think it needed
10 clarification, because there was no time period --

11 THE COURT: I'll permit it.

12 MR. MANGO: -- given.

13 THE WITNESS: Could you restate the
14 question?

15 BY MR. MANGO:

16 Q. Yes.

17 A. Sorry.

18 Q. Now, based on your review of the Tonawanda Coke
19 file, after the date of this letter -- you see it,
20 January 6th, 1997 -- up until April of 2009, is
21 there any correspondence or documents in the DEC
22 file that indicates that Tonawanda Coke is
23 operating quench tower number 2, this quench tower,
24 without baffles?

25 A. No, there isn't.

1 Q. Okay. Based on your review of the Tonawanda
2 Coke file, is there any correspondence or documents
3 indicating that Tonawanda Coke was using quench
4 tower number 1 more than 10 percent of the time?

5 A. No, there isn't.

6 Q. Based on your review of the Tonawanda Coke
7 file, Mr. Sitzman, did Tonawanda Coke ever apply
8 for an approval of an alternative method for using
9 quench tower number 2?

10 A. No, they didn't.

11 Q. What is the procedure to obtain approval for an
12 alternative method of using a quench tower?

13 A. It requires -- Part 214 requires a written
14 application to the department.

15 Q. Is that 214.510? Or 214-510?

16 A. I believe it's 214.10.

17 Q. .10. Okay. Is that the section?

18 A. Yes.

19 THE COURT: And what does that require?

20 THE WITNESS: Requires the submission of a
21 written application for exceptions to the rule.

22 THE COURT: With respect to baffles?

23 THE WITNESS: With respect to any
24 provision of the regulation.

25 MR. MANGO: Okay. And that needs --

1 MR. LINSIN: Your Honor, I apologize for
2 interrupting, but could I just get that regulatory
3 citation again? 214 point --

4 THE WITNESS: 10.

5 MR. LINSIN: Thank you.

6 BY MR. MANGO:

7 Q. And that needs to be in writing?

8 A. Correct.

9 Q. Are you familiar, Mr. Sitzman, with the process
10 by which Tonawanda Coke applied for a Title V
11 permit?

12 A. Yes.

13 Q. What was the first step in the process of
14 applying?

15 A. Completing -- the facility had to complete an
16 application.

17 Q. Okay. What is supposed to be included in the
18 Title V application?

19 A. The Title V application includes all
20 information about the operations at the facility
21 that are regulated under the Clean Air Act,
22 includes -- including citations of the regulations
23 that govern those operations, and then any
24 monitoring to show -- any proposed monitoring by
25 the company to show compliance with the

1 requirements, and any recordkeeping necessary.

2 Q. Do you know if the term "emission unit" is used
3 in Title V applications?

4 A. Yes.

5 Q. Can you tell the jury what is an emission unit?

6 A. An emission unit is a collection of emission
7 sources, processes, emission points, used to
8 identify operations at a facility.

9 Q. Do you know if the term "emission source" is
10 used in Title V applications?

11 A. Yes, it is.

12 Q. Tell the jury, please, what an emission source
13 is.

14 A. An emission source is an industrial operation
15 that can create air pollutant emissions.

16 Q. And is the term "emission point" used in
17 Title V applications?

18 A. Yes, it is.

19 Q. And tell the jury what the term "emission
20 point" means.

21 A. An emission point is any opening in a building
22 or duct or flue or stack where air pollutants enter
23 the atmosphere.

24 Q. All right. Is there a difference between an
25 emission source and an emission point?

1 A. There could be, and they could be pretty much
2 describing the same piece of equipment.

3 Q. Okay. Can you explain that a little further
4 for the jury, please?

5 A. In some cases an emission point may be a
6 combination of several emission sources, and it all
7 goes out one common stack. So in order to write a
8 permit for regulatory purposes, we would have to
9 regulate what source created the emissions, not --
10 not at the stack, because it would be a combination
11 of several different sources. An emission point,
12 there's some that the emission source is right next
13 to the emission point. You can regulate it either
14 way. There's some where the emission point is
15 regulated for a specific reason, as to the amount
16 of, for instance, dust that comes out of that
17 emission point. So it varies depending on the
18 regulation.

19 Q. Do you know, is there flexibility in Title V
20 given to the facility as to how to classify an
21 emission source versus an emission point?

22 A. Absolutely. And that was -- that was a lot of
23 focus of our outreach when we were doing Title V
24 outreach, was that Title V was structured in a way
25 that a company -- since all companies are different

1 to some extent, that a company could structure
2 their information about their company in their
3 application in a way that made sense for that
4 facility. Under emission units, some companies had
5 one emission unit for the entire plant. Some had
6 multiple. Some really large companies had multiple
7 Title V permits.

8 So it was designed to be flexible to regulate a
9 company in a proper way. We're talking, my last
10 count, over 250 air regulations. So it's a wide
11 variety of the way companies are regulated.

12 THE COURT: All right. You just mentioned
13 emission units. How does that differ from sources
14 or points?

15 THE WITNESS: Well, an emission unit is a
16 way to characterize your facility operations in
17 putting different sources and points together.

18 THE COURT: So it's -- it's -- it's the
19 large picture, so to speak --

20 THE WITNESS: It's more of a larger
21 picture, your Honor, to try to characterize how a
22 facility is regulated. If you were in a -- I'm
23 trying think of an example. If you're at a -- if
24 you're at this facility, and it was Title V, and it
25 has a heating plant down there, it might have

1 several boilers that all burn natural gas. The
2 emission unit might be the combination of all those
3 boilers, and they call that the emission unit.
4 Then inside that the sources are each boiler. So
5 this would allow us then to write one permit
6 condition that said -- at the emission unit level,
7 that said all boilers must meet this regulatory
8 requirement, rather than writing a permit that is
9 unnecessarily long because we have to repeat the
10 same thing multiple times for similar operations.
11 So it was just a way to consolidate permit writing.

12 THE COURT: All right. Thank you.

13 BY MR. MANGO:

14 Q. Mr. Sitzman, under Title V who has the
15 obligation to identify the emission sources in the
16 Title V application?

17 A. The facility has the obligation.

18 Q. Okay. And does DEC rely on the facility to
19 identify all emission sources that must be
20 permitted?

21 A. Yes.

22 Q. Okay. Based on your personal experience and
23 knowledge of the Title V process, once a facility
24 applies for a Title V permit, does the DEC go to
25 that facility and identify which parts of the

1 facility need permits?

2 A. Not necessarily.

3 Q. You rely on the facility?

4 A. Yes. And our knowledge of the facility.

5 THE COURT: Well, what does that mean, you
6 rely on the facility?

7 THE WITNESS: The facility is responsible
8 to complete an application that lists everything
9 that's regulated at the facility.

10 THE COURT: So what the facility submits
11 to you in its application is what you rely on?

12 THE WITNESS: Correct.

13 THE COURT: Thank you.

14 MR. MANGO: I'd like to pull up, your
15 Honor, Exhibit 18.09.01 already in evidence.

16 BY MR. MANGO:

17 Q. Mr. Sitzman, do you see this document on your
18 screen?

19 A. Yes, I do.

20 Q. Okay. If you want to just -- just take a
21 moment, take a look at it, and then tell the jury
22 what this document is.

23 A. This is a copy of the Title V permit
24 application from Tonawanda Coke received by the
25 department. I see it's stamped in December 4th,

1 1997.

2 Q. Do you know if that Title V application
3 included additional sections relating to other
4 emission units?

5 A. Yes, it did.

6 MR. MANGO: Okay. Let me -- your Honor,
7 if we could pull up Government Exhibit 18.09.02
8 already in evidence.

9 THE COURT: All right. You just said
10 different emission units.

11 MR. MANGO: Yes.

12 THE COURT: Is that what you meant?

13 MR. MANGO: Yes. I will make sure we
14 focus on that, your Honor. Yes, I did.

15 THE COURT: Okay.

16 BY MR. MANGO:

17 Q. Okay. Do you see Government Exhibit 18.09.02
18 on your screen?

19 A. Yes, I do.

20 Q. All right. If we can focus on this top part,
21 please. Do you see this up at the top, "emission
22 unit"?

23 A. Yes.

24 Q. Okay. Tell the jury what this document you're
25 looking at relates to.

1 A. This describes Emission Unit U-COKEB, Coke B,
2 and the description written in there is this unit
3 is the coke oven battery consisting of 60 coke
4 ovens, charging, pushing, quenching, leaks, and
5 waste heat stack are all associated with this unit.

6 Q. Okay.

7 A. Then it goes on to describe the physical
8 characteristics within that emission unit, and the
9 stacks, and their emission points, and the battery
10 size.

11 Q. Okay. So this U-COKEB is one of those
12 bigger-picture items that the Judge has referenced
13 in terms of the emission unit?

14 A. Correct.

15 Q. Okay. And all the emission sources and points
16 relating to the coke battery are grouped into this
17 emission unit, is that right?

18 A. Yes.

19 Q. All right. I'd like to go to page 6 of this
20 document please, Lauren.

21 Do you see this document on your screen, this
22 page of Government Exhibit 18.09.02?

23 A. Yes.

24 Q. Do you see the reference to QUEN1 there and
25 QUEN2?

1 A. Yes, I do.

2 Q. Okay. Let's start with QUEN1. Is that -- is
3 that quench tower number 1?

4 A. Yes, it is.

5 Q. Do you see the reference to 214.10A in the
6 written permit conditions over there?

7 A. Yes, I do.

8 Q. Okay. What information is being provided in
9 this section?

10 A. It looks like they're -- looks like we're being
11 provided the regulatory requirement for this
12 operation at the facility. It says it's subject to
13 6NYCRR Part 214.10(a), which is the exceptions
14 section, and it references, then, permit
15 conditions.

16 Q. Okay. So does that have any meaning to you for
17 quench tower number 1, this reference to 214.10(a)
18 and permit conditions?

19 A. Yes.

20 Q. Tell the jury what -- what meaning it has to
21 you.

22 A. This -- the permit conditions were related to
23 permit conditions on the old emission point
24 permits, where we allowed the operation of quench 1
25 as a standby unit as long as it was operated less

1 than 10 percent of the time.

2 Q. Okay. So in Tonawanda Coke's application are
3 they requesting to continue that exception?

4 A. Yes.

5 Q. Let's focus on quen -- quench 2, which is below
6 the blue line. Do you see that?

7 A. Yes.

8 Q. All right. Do you see the reference to
9 214.10(a) there and letters of 1996 and '97?

10 A. Yes, I do.

11 Q. And what information is DEC being -- well, let
12 me ask you this. Do those references have any
13 meaning to you relating to quench tower number 2?

14 A. The -- the letters of '96 and '97 were what we
15 talked about earlier, the letters where Tonawanda
16 Coke requested to tear down the tower at quench
17 tower 2, and we approved that.

18 Q. Okay. Does this information here, 214.10(a)
19 and letters of '96 and '97, tell you that quench
20 tower number 2 is being operated without baffles?

21 A. No.

22 Q. You recall those two letters, right?

23 A. Yes.

24 Q. Do those letters state whether baffles are
25 required -- or let me -- let me start with the 1997

1 letter back to Tonawanda Coke. Does that letter
2 state whether baffles are required?

3 MR. LINSIN: Your Honor, I object. This
4 is precisely the question counsel posed to this
5 witness ten minutes ago.

6 THE COURT: Yes, but it didn't have this
7 as a point of reference, so, overruled. Go ahead.

8 BY MR. MANGO:

9 Q. Mr. Sitzman, did the 1997 letter --

10 A. That's January 6th?

11 Q. January 6th, 1997, letter from DEC back to
12 Tonawanda Coke have any reference to baffles in it?

13 A. Yes.

14 Q. And what did it say?

15 A. It said baffles needed to be present in quench
16 station 2.

17 Q. Okay. And this reference to 214.10(a) here
18 you've mentioned is an alternative method or
19 exception that you can apply for --

20 A. Yes.

21 Q. -- for anything under 214?

22 A. Correct.

23 Q. Based on your review of the file, did TCC ever
24 apply for an alternative method for quenching
25 pursuant to New York regulations at number 2?

1 A. No.

2 Q. And what must have been done by the Tonawanda
3 Coke Corporation if they wanted to use an
4 alternative method for quenching at tower number 2
5 without baffles?

6 A. They would have had to have made a written
7 application to the department.

8 Q. And, in fact, do you know if Tonawanda Coke had
9 done that in the past for the other quench tower?

10 A. Yes, they had.

11 Q. Do you know if Tonawanda Coke could just use an
12 alternative method of quenching without baffles
13 without applying in writing and providing details
14 to the DEC to review and approve?

15 A. No, they couldn't.

16 Q. Do you know if TTC could use an alternative
17 method of quenching without baffles without
18 specific approval of the DEC in writing?

19 A. No, they couldn't.

20 MR. MANGO: All right. We can take that
21 down.

22 THE COURT: No. Hold it one second.

23 MR. MANGO: Yes.

24 THE COURT: Miss DiFillipo, enlarge this
25 so that we find out -- what was at the top of the

1 page above the DEC ID? What does it say up there?

2 Okay. Thank you.

3 BY MR. MANGO:

4 Q. Okay. Mr. Sitzman, do you know if a map or
5 plot plan is generally submitted with a Title V
6 application?

7 A. Generally.

8 Q. Okay. Let me show you Government Exhibit 18.01
9 already in evidence. Do you see this document on
10 your screen?

11 A. Yes, I do.

12 Q. All right. Can you tell the jury what this is?

13 A. We may have to zoom in, but this is -- appears
14 to be a plot plan of Tonawanda Coke. I can't quite
15 read the date, but I remember this drawing, of
16 seeing it before, and it's actually a plot plan
17 from, I believe, before they owned the facility.

18 And written in hand on the plot plan are the
19 emission points, emission unit, all the
20 identification numbers that Tonawanda Coke used in
21 preparing their permit application.

22 Q. And this was submitted as part of the Title V
23 application?

24 A. Yes.

25 Q. Mr. Sitzman, upon receipt of the Title V

1 application by Tonawanda Coke Corporation, what, if
2 anything, happened at the DEC?

3 A. The application was received by our
4 Environmental Permits Bureau. As I described
5 earlier, they logged it in, sent it to key punch.
6 When it came back, they sent it to the air program
7 for review and drafting of a permit.

8 Q. Okay. And that's what you've previously
9 described, your office -- when you were RAPCE, your
10 office would review these permits -- or
11 applications, and then draft permits?

12 A. Yes, even before I was a RAPCE.

13 Q. Okay. So that's what happened upon receipt of
14 Tonawanda Coke's application?

15 A. Correct.

16 Q. After the review, what happened then?

17 A. Once a permit is reviewed, a Title V permit,
18 when the air program is satisfied with it, we --
19 and ready to issue it as a draft permit, we send it
20 back to the Division of Environmental Permits, and
21 they prepare the documents to send the permit out
22 to public notice, and it goes through a 30-day
23 public notice comment period, where comments can be
24 submitted to the department either asking questions
25 or asking for changes to the permit.

1 Q. Okay. So there is a draft permit?

2 A. There is a draft permit first.

3 Q. Okay. Are you familiar with that draft
4 permit --

5 A. Yes.

6 Q. -- in the Tonawanda Coke case?

7 A. Yes.

8 Q. All right. Did the draft permit allow for the
9 use of a pressure-release or bleeder valve in the
10 by-products department on the coke oven gas line?

11 A. No.

12 Q. Did the draft permit include any requirement
13 relating to baffles in the quench towers?

14 A. Yes, it did.

15 Q. Okay. What were those requirements?

16 A. The requirement in the draft permit required
17 that each quench tower, both quench 1 and quench 2,
18 have baffles installed.

19 Q. Okay. Now, you just told us, though, that in
20 the application Tonawanda Coke was asking to
21 continue that exception.

22 A. Correct.

23 Q. Did the draft permit miss that?

24 A. Yes, it did.

25 Q. Did Tonawanda Coke have an opportunity to

1 comment on the draft permit?

2 A. Yes, they did.

3 Q. Do you know if they commented?

4 A. Yes, they did.

5 MR. MANGO: I'd like to pull up Government
6 Exhibit 18.02, your Honor, which is in evidence.

7 BY MR. MANGO:

8 Q. Mr. Sitzman, do you see Government
9 Exhibit 18.02 on your screen?

10 A. Yes.

11 Q. Okay. Can you tell the jury what this is?

12 A. It's a copy of a letter from Tonawanda Coke,
13 September 28th, 2001, commenting on the draft
14 Title V permit.

15 Q. Okay. So these are the comments submitted by
16 Tonawanda Coke?

17 A. Correct.

18 Q. Do you see the reference here under Item 34.2
19 to 6NYCRR 201-3.3(c)(33)?

20 A. Yes, I do.

21 Q. What does that regulation, Subpart
22 201-3.3(c)(33), relate to?

23 A. It was a note in the comments that noted the
24 existence of a pressure-relief vent on the roof of
25 Emission Unit UACBLD, which is the AC building --

1 called the AC building at the facility. And they
2 notified us that it's considered a trivial activity
3 under Part 201.

4 Q. Okay. So you mentioned trivial activity. What
5 is Subpart 201-3.3(c)(33)?

6 A. Well, (c)(33) is the trivial activity that
7 describes emergency pressure-relief vents.

8 Q. Okay. Emergency pressure-relief vents. In
9 your experience, have you seen emergency relief
10 vents or stacks during your inspections?

11 A. Yes.

12 Q. Under what conditions does an emergency relief
13 vent or stack operate?

14 A. Under emergency conditions.

15 Q. Okay. If the emission source released as part
16 of a regular operation, could that qualify as an
17 emergency relief vent or stack?

18 A. No. The -- the definition of that trivial
19 activity includes specific language that says
20 regular release from an emergency release vent
21 would not be considered a trivial activity.

22 Q. Okay. If the emission did release as part of a
23 regular operation, would it need a permit?

24 A. Absolutely.

25 Q. And are you familiar with the definition of

1 "emergency" under Part 201?

2 A. Yes, I am.

3 Q. What is your understanding of the definition of
4 "emergency"?

5 A. An emergency is any sudden, unforeseen
6 catastrophic event or act of God.

7 Q. Now, if we could just zoom back out of this,
8 please, Lauren. If we could go to the next page.
9 And then the next page.

10 Okay. Mr. Sitzman, did you see the three pages
11 of comments by Mr. Kamholz here?

12 A. Yes.

13 Q. Did TCC -- or Tonawanda Coke's comments
14 identify that a pressure-relief bleeder valve was
15 operating in the by-products document on the coke
16 oven gas line?

17 A. No.

18 Q. Did Tonawanda Coke's comments address Condition
19 96 or 97 of the draft permit relating to operation
20 of the quench towers?

21 A. Could you refresh my memory on conditions 96
22 and 97?

23 Q. Yes. Are you aware of whether the requirements
24 for quench tower number 1, the west quench tower,
25 were included as Condition 96 in the draft permit?

1 A. Yes.

2 Q. All right. And for quench tower number 2, the
3 east quench tower, do you know if those -- the
4 requirements for the operation of that quench tower
5 were included as Condition 97 of the draft permit?

6 A. Yes.

7 Q. In the comments you just looked at that are on
8 your screen, did Tonawanda Coke's comments address
9 Condition 96 or 97 of operation of their quench
10 towers?

11 A. No, they did not.

12 Q. All right. And you just testified that in the
13 draft permit for both quench towers it said it had
14 to have baffles?

15 A. Yes.

16 Q. And there was no comment on that?

17 A. Correct.

18 Q. Okay. Following the comment period, do you
19 know if Tonawanda Coke was issued a Title V permit?

20 A. Yes, they were.

21 MR. MANGO: All right. Your Honor, I'd
22 like to pull up Government Exhibit 18.18 which is
23 in evidence.

24 BY MR. MANGO:

25 Q. Mr. Sitzman, do you see this document on your

1 screen?

2 A. Yes, I do.

3 Q. Okay. What is this document on your screen?

4 A. It's a copy of the permit transmittal letter to
5 Tonawanda Coke for the Title V permit,
6 May 2nd, 2002.

7 Q. Okay. So is that the day the permit was
8 transmitted to the Tonawanda Coke Corporation?

9 A. Yes.

10 Q. Let's take a look, please, Lauren, at page 7 of
11 this document. We can zoom in here.

12 Page 7 talks about DEC general conditions. Can
13 you tell the jury what DEC general conditions are?

14 A. The beginning of a Title V permit has a listing
15 put in -- that part of the permit is done by our
16 Environmental Permits Group that issues all our
17 permits, and these are the administrative
18 requirements for permit holders in New York State.

19 Q. Okay. So these are more just administrative
20 requirements?

21 A. Correct.

22 Q. Okay. If we could go to page 11, please,
23 Lauren. If we could zoom in.

24 Do you see this page on your screen,
25 Mr. Sitzman?

1 A. Yes.

2 Q. Okay. What is page 11 of this exhibit?

3 A. This is the title page of the actual air
4 Title V permit.

5 Q. And at the bottom it gives an effective date
6 and an expiration date, is that right?

7 A. Correct.

8 Q. If we could go to page 16 now, please, Lauren.
9 Let's focus in on Condition number 4.

10 Do you see Condition number 4 on your screen?

11 A. Yes, I do.

12 Q. What is Condition 4 of the Title V permit?

13 A. Condition 4 lists -- are the applicable
14 requirement which is applicable to all Title V
15 facilities under 6NYCRR Part 201-1.2. And it
16 requires that any existing emission source that was
17 subject to permitting requirements must submit an
18 application to have that emission source included
19 in the permit.

20 THE COURT: Say that again.

21 THE WITNESS: I didn't say that very well,
22 did I?

23 It requires any existing -- if there was an
24 existing emission source at a facility that never
25 had a permit, it's a requirement that re -- that

1 says that the source owner must apply for a permit
2 for that source.

3 THE COURT: Thank you.

4 BY MR. MANGO:

5 Q. Okay. Do you know when Part 201 first imposed
6 permitting requirements for emission sources?

7 A. Early 1970s, late 1960s.

8 Q. In fact, based on your review of the DEC file,
9 what is the earliest Air 100 you recall seeing for
10 the Tonawanda Coke facility?

11 A. Mid-1980s.

12 Q. And those Air 100s, were they issued pursuant
13 to Part 201?

14 A. Yes, they were.

15 Q. All right. I'd like to go to page 90, please,
16 Lauren. If we could focus in on Condition 96 here.
17 Actually, just -- focus just on that portion.
18 Great.

19 Mr. Sitzman, do you see Condition 96 on your
20 screen?

21 A. Yes, I do.

22 Q. Okay. With respect to 96A, is there a
23 requirement for baffles?

24 A. Yes, there is.

25 Q. Okay. Now, recalling that Title V application

1 I showed you with QUEN1 and QUEN2 and Emission
2 Source ID 9 and 10, do you see emission source
3 there?

4 A. Yes.

5 Q. So Condition 96 relates to which quench tower?

6 A. Quench tower 1.

7 Q. All right. And it says it must have baffles?

8 A. Correct.

9 Q. Is there any reference to a 10 percent usage
10 restriction?

11 A. No, there isn't.

12 Q. All right. Based on your earlier exemption,
13 what was your understanding of Condition 97
14 relating to baffles? I'm sorry. Condition 96
15 relating to baffles.

16 A. Based on what I know now, that this should have
17 had a condition limiting operation to less than 10
18 percent of the time and allowing an exception for
19 the installation of baffles.

20 Q. All right. If we can go to the next page,
21 please, Lauren. Let's focus on Condition 97.

22 Do you see Condition 97 on your screen,
23 Mr. Sitzman?

24 A. Yes.

25 Q. And you see Emission Source 19 there?

1 A. Yes, I do.

2 Q. So what -- what quench tower does Condition 97
3 now relate to?

4 A. Quench tower 2.

5 Q. Is there a requirement for baffles in this
6 condition?

7 A. Yes. Down in A.

8 Q. So this paragraph here?

9 A. Yes.

10 Q. Was there any previous exemption granted to
11 Tonawanda Coke for this quench tower to not have
12 baffles?

13 A. No.

14 Q. So was this quench tower required to have
15 baffles?

16 A. Yes.

17 Q. All the time?

18 A. All the time.

19 THE COURT: Did you say there was an
20 exemption for Emission Source 9 with respect to
21 baffles?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 BY MR. MANGO:

25 Q. That's the -- I can clarify, your Honor.

1 That exemption related to the 1983 and then
2 response letter from 1984 that DEC sent to
3 Tonawanda Coke?

4 A. Correct.

5 Q. All right. And that related solely to quench
6 tower number 1, the west quench tower?

7 A. Yes.

8 Q. And it related to this usage requirement of
9 10 percent or less, if that is the case then you
10 don't need baffles?

11 A. Correct.

12 Q. Now, one year after Tonawanda Coke's Title V
13 permit was issued that we've been looking at here,
14 do you know whether or not a new federal Clean Air
15 Act law was enacted that added additional
16 requirements to certain coke plants?

17 A. Yes.

18 Q. And as part of that new law, did Tonawanda Coke
19 have to submit data to the Department of
20 Environmental Conservation to determine if it was
21 subject to that new law in 2003 in addition to the
22 existing Title V permit?

23 A. Yes. They submitted data.

24 Q. And do you know if Tonawanda Coke submitted
25 data to determine if it was subject to this new law

1 in addition to its existing Title V permit?

2 A. Yes, they did.

3 MR. MANGO: All right. I'd like to, your
4 Honor, pull up Government Exhibit 131 in evidence.

5 BY MR. MANGO:

6 Q. Mr. Sitzman, take a look at this. Let's focus
7 on this page. Do you recognize this document?

8 A. Yes, I do.

9 Q. Okay. What is this document, if you can tell
10 the jury.

11 A. This is a letter from Tonawanda Coke -- copy of
12 a letter July 11, 2003, to myself as RAPCE,
13 submitting to us an inventory of hazardous air
14 pollutant emissions at Tonawanda Coke, to describe
15 if the regulation -- to determine if the
16 regulation -- the new regulation was applicable to
17 Tonawanda Coke or not.

18 THE COURT: Is that a federal regulation
19 or a New York State regulation?

20 THE WITNESS: It's a federal regulation.
21 Federal NESHAP regulation.

22 BY MR. MANGO:

23 Q. And that came into effect in 2003?

24 A. It was proposed in 2003. It was proposed
25 around that time frame. I'm not exactly sure the

1 exact date it went final.

2 Q. Okay. The hazardous air pollutants, that's
3 commonly called HAPS?

4 A. Correct.

5 Q. So if we use the term HAPS, that's what it
6 refers to. So was there any data included with
7 that cover letter relating to the HAPS emissions
8 from Tonawanda Coke?

9 A. Yes. There was a report prepared by a
10 consultant documenting the total emissions from the
11 facility.

12 Q. Okay. Based on the total emissions Tonawanda
13 Coke claimed it released in the HAPS report, was
14 Tonawanda Coke subject to the requirements of this
15 new federal law?

16 A. No, they would not be.

17 Q. Was Tonawanda Coke still subject to its
18 existing Title V permit?

19 A. Yes.

20 Q. So was the HAPS report ever part of Tonawanda
21 Coke's existing Title V permit, if you know?

22 A. No.

23 Q. If Tonawanda Coke wanted to change or modify
24 its existing Title V permit, what process, if any,
25 was it required to follow?

1 A. It would have to apply for a permit
2 modification.

3 Q. And if someone wanted to review or look at
4 Tonawanda Coke's existing Title V permit, would
5 this HAPS report of 2003 be part of it?

6 A. No, it would not.

7 Q. Okay. What was -- we can take this down.
8 Thank you, Lauren.

9 What was the expiration of the permit, the
10 Title V permit?

11 A. The permit is still in effect. It was
12 scheduled to expire in May 2007.

13 Q. Do you know if Tonawanda Coke submitted a
14 renewal application?

15 A. Yes, they did.

16 Q. And have you reviewed that renewal application
17 prior to testifying here today?

18 A. Yes, I have.

19 MR. MANGO: Your Honor, I'd like to pull
20 up Government Exhibit 18.06 in evidence.

21 BY MR. MANGO:

22 Q. Mr. Sitzman, do you see this document on your
23 screen?

24 A. Yes.

25 Q. And what is this document, if you can tell the

1 jury?

2 A. It's a letter from Tonawanda Coke to the
3 department, October 20th, 2006, submitting the air
4 permit renewal application.

5 Q. All right. If we could go to page 31, please,
6 Lauren, of this document. Let's focus just on the
7 table part, please.

8 Do you see where I put arrows -- one arrow for
9 Emission Source 9 and Emission Source 10?

10 A. Yes, I do.

11 Q. Do you see any reference in these sections to
12 Part 214.10?

13 A. No, I do not.

14 Q. So as part of the renewal application submitted
15 by Tonawanda Coke, is there any discussion
16 regarding an exemption for the requirement to have
17 baffles in the west quench tower, number 1?

18 A. Not in this section.

19 Q. And in the renewal application is there any
20 discussion that quench tower number 2, the east
21 quench tower, is being used without baffles?

22 A. No.

23 Q. All right. We can take that down. Thank you,
24 Lauren.

25 Now, Mr. Sitzman, we've looked at the Title V

1 permit application, the map that was included with
2 that application, comments that were submitted as
3 part of the draft permit that was made, and then
4 now this renewal application. Do you recall going
5 through all those documents?

6 A. Yes.

7 Q. All right. Based on your review of those
8 documents, is there any mention in those documents
9 that Tonawanda Coke is using quench tower number 2
10 without baffles?

11 A. No.

12 Q. How about in the rest of the DEC file? Before
13 April of '09 is there any reference that Tonawanda
14 Coke is using quench tower number 2 without
15 baffles?

16 A. No.

17 Q. Okay. Those same documents we just went
18 through -- the Title V permit application, the map,
19 the comments submitted, the renewal application --
20 based on those documents, is there any mention that
21 Tonawanda Coke is using quench tower number 1 more
22 than 10 percent of the time?

23 A. No.

24 Q. How about in the rest of the DEC file? Is
25 there any reference that Tonawanda Coke is using

1 quench tower number 1 more than 10 percent of the
2 time?

3 A. Not in my review.

4 Q. All right. Now, those same documents -- again,
5 keep that in your mind. Based on a review of those
6 same documents, is there any mention that Tonawanda
7 Coke was emitting coke oven gas from a
8 bleeder/pressure-release valve off of the coke oven
9 gas line in the by-products area?

10 A. No.

11 Q. Mr. Sitzman, are you familiar with by-product
12 flow diagrams that were submitted by Defendant
13 Kamholz to the DEC?

14 A. Yes.

15 Q. You've seen those documents in the DEC file?

16 A. Yes.

17 Q. Were there any by-product flow diagrams
18 submitted to DEC prior to April of 2009 that
19 identified a bleeder/pressure-release valve on the
20 coke oven gas line in the by-products area?

21 A. No.

22 Q. All right. Now, you've mentioned you've done
23 some inspections at Tonawanda Coke. I'd like to
24 talk about your inspections now for a time.

25 THE COURT: Okay. Let's take a break at

1 this point in time, then we can hear all about the
2 inspections.

3 MR. MANGO: Yes, your Honor.

4 THE COURT: Okay. All right. Is that
5 okay with you, ladies and gentlemen, if we take a
6 break? All right. We'll see you back here about
7 20 after or so. Okay. Actually quarter of, Chris.

8 COURT SECURITY OFFICER: Yes.

9 (Jury excused from the courtroom.)

10 THE COURT: Okay, Mr. Sitzman. You can
11 step down, sir. Thank you.

12 THE WITNESS: Thank you.

13 MR. LINSIN: May we be released?

14 THE COURT: We'll see you in 20 minutes.

15 MR. PIAGGIONE: Thank you, your Honor.

16 (Short recess was taken.)

17 (Jury seated.)

18 THE COURT: Welcome back, ladies and
19 gentlemen. Please have a seat. Larry Sitzman is
20 back on the stand. He remains under oath. This is
21 direct examination by Mr. Mango, and I think he's
22 ready to get into some questions about the
23 investigation. And the attorneys and parties are
24 back present. You are here.

25 Remember the government has the burden of proof

1 beyond a reasonable doubt, and the defendants are
2 entitled to the presumption of innocence.

3 And, Mr. Mango, I think you're on.

4 MR. MANGO: Thank you, your Honor.

5 BY MR. MANGO:

6 Q. Mr. Sitzman, in the course of your duties how
7 many inspections had you completed at the Tonawanda
8 Coke Corporation prior to April of 2009?

9 A. Maybe ten.

10 Q. Okay. If you can recall, when was your first
11 inspection?

12 A. I believe my first inspection was in the mid to
13 late 1990s.

14 Q. During your inspections, did you focus on any
15 particular area at Tonawanda Coke during your
16 inspections?

17 A. My first inspection was a walk-through with the
18 inspector, the DEC inspector at the facility, to
19 familiarize myself with the plant. Mostly when I
20 go I look at the coke battery.

21 Q. Okay. Why do you focus on the coke battery?

22 A. That's where the most regulations are from the
23 state and federal level and where the most
24 complaints come from the public that sees the
25 facility.

1 Q. Okay. So prior to April of 2009, how
2 frequently did you conduct inspections at Tonawanda
3 Coke?

4 MR. PERSONIUS: Your Honor, I think that's
5 been asked and answered, hasn't it?

6 MR. LINSIN: He just asked it.

7 THE WITNESS: Yes. Sustained.

8 BY MR. MANGO:

9 Q. Well, your Honor, I'm trying to ask -- did you
10 go every year or a particular --

11 A. No, I did not.

12 Q. Okay. So, how did your inspections come up
13 that you decided to go to Tonawanda Coke?

14 A. I began supervising the inspector at the
15 facility. I was the engineer -- engineering
16 supervisor then, after 1993, and then we hired
17 another engineer who took over, who was in charge
18 of that facility and supervised the technician that
19 did the inspections. And I was the one in the
20 region that had coke plant experience with my years
21 inspecting and permitting Bethlehem Steel, so I was
22 training her in coke plant operations and how the
23 regulations apply to facilities.

24 Q. Okay. Let's get the jury some names. Who was
25 the technician who you mentioned during your first

1 inspection you went with --

2 A. The technician's name was Gary Foersch.

3 Q. Okay. And now you've begun talking about
4 another engineer?

5 A. Then we hired an engineer in 1998. She moved
6 from a different division into air. Her name is
7 Cheryl Webster.

8 Q. Okay. And you recall at some point when
9 Miss Webster started in the Air Division, you went
10 out there with her?

11 A. Yes.

12 Q. Okay. Now, you've talked about the Title V
13 permit being issued in 2002, is that right?

14 A. Correct.

15 Q. For inspections that you conducted after 2002,
16 did you review the Title V permit before all of
17 those inspections?

18 A. No.

19 Q. Mr. Sitzman, do you recall a joint EPA-DEC
20 inspection in April of 2009?

21 A. Yes, I do.

22 Q. And prior to that inspection, what did your
23 inspections consist of at the Tonawanda Coke
24 Corporation?

25 A. I was involved mainly to -- as part of the

1 training of Cheryl in how to regulate the facility
2 and write the Title V permit. I helped her with
3 that. And at later times prior -- within a year or
4 two prior to the April 2009 inspection, we were
5 visiting the facility more frequently. By then we
6 had determined that benzene emissions were high in
7 the area, and it looked like at the time throughout
8 our process that it looked like Tonawanda Coke was
9 probably the main source of that benzene, so we
10 started making more frequent visits to the
11 facility. We were looking for sources of benzene
12 emissions, to try to get them controlled and reduce
13 those emissions.

14 Q. Okay. Your inspections prior to April of 2009,
15 did they last -- when you went to the site, did
16 they last a particular set amount of time, or did
17 they vary?

18 A. They varied.

19 Q. Can you describe how long/how short they were
20 for the jury?

21 A. It could have been a half an hour if I was
22 there in response to a complaint, I needed to see
23 something that happened at the facility or just
24 talk to Mr. Kamholz. It could be a couple hours if
25 we spent more time in the facility, or four hours

1 walking throughout the facility looking at the
2 various units at the plant.

3 Q. Okay.

4 A. Sometimes it was just meetings and I didn't go
5 back to the plant.

6 Q. During your inspections were you escorted?

7 A. Typically, all plants escort you on
8 inspections, yes.

9 Q. Okay. So you were escorted, though, during --

10 A. Yes.

11 Q. -- your inspections at Tonawanda Coke
12 Corporation?

13 A. Yes.

14 Q. All the time?

15 A. Yes.

16 Q. Did you keep any notes during these
17 inspections?

18 A. Occasionally.

19 Q. And were there other inspectors with you that
20 would take notes?

21 A. From time to time, yes.

22 Q. And after the inspections were your inspection
23 findings documented anywhere?

24 A. Typically, our inspections are documented in
25 our Air Facility System or in notes to the file or

1 both places.

2 Q. Okay. Air Facility System, is that sometimes
3 called the AFS?

4 A. Yes, that's our computer system that is created
5 to write permits in, document inspections,
6 enforcement activities, things like that. It's
7 where we keep all our information related to
8 regulated facilities.

9 Q. And when you were responding to a complaint at
10 Tonawanda Coke, what was the procedure you would
11 follow?

12 A. It varied according to the complaint. It may
13 result -- it may require a follow-up inspection,
14 that I would call the plant to set up an
15 inspection. Sometimes it was just a call to the
16 plant to see if anything was going on. And
17 sometimes I would just stop in when I either saw
18 something around the plant -- we did a lot of
19 surveillance in those days when the study was going
20 on. So if we saw something, we could occasionally
21 just stop in the plant and ask what was going on.

22 Q. Okay. Are you familiar with a document known
23 as a full compliance evaluation checklist?

24 A. Yes, I am.

25 Q. Can you tell the jury what that document is?

1 A. It's -- every Title V facility has to have one
2 of those completed every year. It's part of our
3 administrative process at DEC. Basically requires
4 the RAPCE, me in this case, the engineer in charge
5 of a Title V facility fills out the application --
6 or fills out the checklist that goes through
7 everything required throughout the year. The -- is
8 the Title V permit current? Did the facility
9 submit their semiannual monitoring reports? Did
10 they submit their annual compliance certification?
11 Was there any source testing done at the facility?
12 Were there any complaints, was on there. And then
13 that engineer had to make a determination at the
14 bottom of the form, is the facility in compliance
15 and is the facility in compliance continuously, or
16 were there some problems identified.

17 So that form was completed by the staff,
18 submitted to me. I would check through the form.
19 I would get on our AFS computer system and make
20 sure everything for a facility was complete, and
21 when it was complete, I signed the form and entered
22 that information into our AFS system.

23 Q. All right. During your inspections prior to
24 April of 2009, did you ever spend any time in the
25 by-products area?

1 A. Yes.

2 Q. Why would you spend time in the by-products
3 area, if you could tell the jury?

4 A. There's many regulated units in the by-products
5 area.

6 Q. When you were there, did you smell anything
7 while you were in by-products?

8 A. There's odors all over coke plants.

9 Q. Okay. What type of odors?

10 A. Coke odors. When -- I don't mean to -- I
11 didn't mean that to be funny. Sorry. Coke oven
12 gas is a complex composition of many different
13 chemicals.

14 Q. All right. Are you familiar with a roadway
15 known as Broadway at the Tonawanda Coke
16 Corporation?

17 A. Yes, I am.

18 Q. And did you ever walk along that road?

19 A. Yes.

20 Q. What was your purpose for walking on the road,
21 this Broadway?

22 A. Broadway is the central road through the coke
23 plant.

24 Q. Now, during your inspections, how long would
25 you spend on walking on Broadway prior to April

1 of 2009?

2 A. Depends what I was there -- the reason for my
3 inspection.

4 Q. Okay. Let me ask you, have you come to -- come
5 to know something known as a
6 bleeder/pressure-release valve that was on the coke
7 oven gas line --

8 A. Yes, I have.

9 Q. -- in the by-products area?

10 A. Yes, I have.

11 Q. And that knowledge came about -- when did you
12 learn about that?

13 A. I learned about that during the April 2009
14 inspection with EPA.

15 Q. Okay. Are you familiar -- so I still want to
16 talk about the time prior to April of 2009. Do you
17 know, though, when you discovered it, whether that
18 bleeder/pressure-release valve was associated with
19 any type of small building or shack?

20 A. At the time I didn't.

21 Q. No. But now do you know that?

22 A. Yes.

23 Q. Okay. So you know what I'm -- do you know what
24 I'm talking about? The shack near the bleeder?

25 A. Yes.

1 Q. Okay. Prior to April of '09, now knowing you
2 have a familiarity with this -- current familiarity
3 with this shack, is it green in color?

4 A. I believe it is.

5 Q. All right. This green shack, prior to April
6 of 2009 did you spend any time in the immediate
7 area right around that green shack?

8 A. I spent time in the general area around there.

9 Q. Okay. Not -- I'm talking about right at the
10 green shack. Did you spend time right at the green
11 shack?

12 A. I never looked at anything in that green shack.

13 Q. Okay. When you were in the by-products area,
14 would you generally spend a long time in one
15 location?

16 A. No. We moved through, looking at the different
17 units. We'd stop for a question, but that was
18 about it.

19 Q. Okay. During inspections prior to April
20 of 2009, did you ever look inside either of the two
21 quench towers at Tonawanda Coke?

22 A. No, I did not.

23 Q. Okay. Why not?

24 A. They weren't a focus of my inspection.

25 MR. MANGO: Your Honor, if I just may have

1 a moment here?

2 THE COURT: Yes.

3 BY MR. MANGO:

4 Q. Mr. Sitzman, are you familiar with the term
5 "annual and semiannual compliance certifications"
6 under Title V?

7 A. Yes, I am.

8 Q. Can you tell the jury what annual and
9 semiannual compliance certifications under Title V
10 are?

11 A. The Title V program required facilities with a
12 Title V permit -- or requires facilities with a
13 Title V permit to semiannually submit a report of
14 all the monitoring they do at the facility required
15 in their permit. Annually it requires a facility
16 to look through the whole past year and determine
17 if they were in compliance continuously with their
18 Title V permit or intermittently, and submit a
19 report to the department for each condition,
20 indicating their compliance status.

21 Q. Okay. For the time periods of -- I just asked
22 you a question of why you did not look into the
23 quench towers prior to April of 2009. Do you
24 remember that?

25 A. Yes.

1 Q. Okay. For the period prior to April of 2009,
2 either before, during, or after your inspections
3 did you review semiannual and annual compliance
4 certifications submitted by the Tonawanda Coke
5 Corporation?

6 A. I reviewed the -- I never did. I reviewed the
7 compliance -- the full compliance evaluation
8 checklist for the facility.

9 MR. MANGO: All right. Well, let me pull
10 up Government Exhibit 31 which is in evidence, your
11 Honor. Let's take a look at this.

12 BY MR. MANGO:

13 Q. Do you see this document on your screen,
14 Mr. Sitzman, Certification of Truth, Accuracy and
15 Completeness?

16 A. Yes.

17 Q. Report type, annual, for the period of January
18 of 2005 to December of 2005.

19 A. Yes.

20 Q. Okay. If we could go to the next page.

21 Do you see page number 2 of Government
22 Exhibit 31?

23 A. Yes, I do.

24 Q. Okay. Are you familiar with this page?

25 A. Yes, I am.

1 Q. Would these be documents -- the annual
2 monitoring reports that you would have reviewed
3 prior to inspections?

4 MR. PERSONIUS: Your Honor, he just
5 testified he didn't review them.

6 MR. MANGO: Your Honor, I think there may
7 be a confusion with the name.

8 MR. PERSONIUS: Well, then, why is he
9 leading him through it? The witness said he didn't
10 review it.

11 THE COURT: Well, I'm going to allow it.
12 Overruled.

13 BY MR. MANGO:

14 Q. Do you recognize this document?

15 A. Yes.

16 Q. Did you review this? Did you see this document
17 prior to your inspections?

18 A. I did not.

19 Q. You did not. Okay. Now, prior to April
20 of 2009 did Defendant Kamholz ever mention the east
21 quench tower, number 2, had no baffles?

22 A. No, he did not.

23 Q. Did he ever tell you that there was an
24 exemption relating to the east quench tower,
25 number 2, that allowed quenching without baffles?

1 A. No.

2 Q. Did he ever tell you that other DEC inspectors
3 had authorized the use of the east quench tower,
4 number 2, without baffles?

5 A. No.

6 Q. And did he ever tell you that the west tower,
7 number 1, was being used 10 percent or more of the
8 time?

9 A. No.

10 Q. Okay. Now, during inspections prior to April
11 of 2009, did you ever notice a pressure-release
12 valve in the by-products area at Tonawanda Coke?

13 MR. LINSIN: Objection. Asked and
14 answered.

15 MR. MANGO: This is more general, your
16 Honor.

17 THE COURT: Sustained.

18 BY MR. MANGO:

19 Q. You remember me asking you a question about a
20 pressure-relief/bleeder valve on the coke oven gas
21 line in the by-products area?

22 A. Yes.

23 Q. Okay. And you now have familiarity with that
24 based on an April of 2009 inspection?

25 A. Yes.

1 Q. Prior to April of 2009 did you ever notice any
2 other type of pressure-release valves in the
3 by-products area?

4 A. Yes.

5 Q. All right. How many?

6 A. I remember one.

7 Q. Okay. Can you tell the jury where that was?

8 A. That was on the light oil storage tank.

9 Q. Okay. And describe for the jury what you
10 observed and how you became aware of this
11 pressure-release valve on the light oil storage
12 tank.

13 A. Like I explained earlier, we were looking
14 for -- back at that time we were looking for
15 benzene sources at Tonawanda Coke to see if we
16 could get any reductions, and that was one of the
17 sources, that light oil storage at larger
18 facilities are required to control emissions from
19 light oil storage tanks and loading. So we spent
20 some time with the facility, looking at that tank.
21 As I was in that area looking at that tank and how
22 it operated, and we finally got controls put on
23 that to lower the benzene emission part of the
24 emissions.

25 Q. Okay. Now, you -- let's go back to the

1 pressure-release valve on the coke oven gas line,
2 the bleeder, that you say you became aware of in
3 April of 2009.

4 A. Okay.

5 Q. And before April of 2009 you were not aware of
6 that, that's what you said?

7 A. Correct.

8 Q. Okay. Tell the jury why you were not aware of
9 the bleeder/pressure-release valve on the coke oven
10 gas line.

11 A. I never saw it. It wasn't in the permit
12 application. We never talked about it being
13 required in the permit application. We were never
14 notified of it. The by-products area is -- I don't
15 know if it's miles of pipe, but there's a lot of
16 pipe in different instruments and units there.
17 Some of the units, we would go in and focus on a
18 certain unit that was required by federal
19 regulation to be, for instance, under vacuum so
20 there was no emissions. So, typically, when I went
21 in the by-products area, we would focus on specific
22 units to make sure they were in compliance and had
23 the right components to meet federal regs or our
24 state regs.

25 Q. Okay. Now, in your role as RAPCE, did any DEC

1 inspector ever report to you that there was a
2 bleeder/pressure-release valve on the coke oven gas
3 line in the by-products area?

4 A. No.

5 Q. Prior to April of 2009, did Defendant Kamholz
6 ever mention to you that there was a bleeder valve
7 in operation on the coke oven gas line in the
8 by-products area?

9 A. No.

10 Q. Based upon your review of documents submitted
11 to the DEC by Tonawanda Coke, did you have any
12 reason to believe that there was excess coke oven
13 gas being vented to the atmosphere at Tonawanda
14 Coke prior to April of 2009?

15 A. No.

16 Q. Okay. Why is that?

17 A. Since I started learning about Tonawanda Coke
18 and going to the facility, they had always said
19 they were deficient in coke oven gas, that they
20 didn't produce enough to have any excess. So I
21 would have never thought that there would be coke
22 oven gas leaking out there. They needed all they
23 could get to operate the facility.

24 And in the -- the earlier report we talked
25 about, the hazardous air pollution emission

1 inventory report, they actually made a statement in
2 that that they didn't have any extra coke oven gas,
3 that they used all they had. They were actually
4 coke oven gas deficient at the plant.

5 Q. Okay. So -- so, based on those comments --
6 well, let me withdraw that. Do you remember --
7 let's move on. Do you remember an inspection in
8 August 21st of 2008?

9 A. Yes.

10 Q. All right. During that inspection, do you know
11 if you were provided any documents?

12 A. Yes, we were.

13 MR. MANGO: Okay. I'd like to show you --
14 for identification purposes, your Honor --
15 Government Exhibit 113, and absent an objection,
16 your Honor, the government would move this into
17 evidence.

18 THE COURT: Okay. 113.

19 MR. LINSIN: Your Honor, if we could just
20 see if we could scroll through the pages of this
21 exhibit.

22 THE COURT: Certainly.

23 MR. LINSIN: No objection, your Honor.

24 MR. PERSONIUS: No objection, your Honor.

25 THE COURT: All right. 113, no objection,

1 received. And do you choose to have it published?

2 MR. MANGO: Yes, please, your Honor.

3 THE COURT: Please.

4 (Government's Exhibit 113 was received
5 into evidence.)

6 BY MR. MANGO:

7 Q. So if we could focus on this section.

8 Mr. Sitzman, do you see what's on your screen?

9 A. Yes, I do.

10 Q. Okay. What -- what is this document that is on
11 your screen, and when did you receive it?

12 A. Well, it's notes written on top that we
13 received it August 21st, 2008, during a site
14 inspection.

15 Q. Okay. And do you recall who was with you
16 during that site inspection?

17 A. I believe Cheryl Webster was with me.

18 Q. And this is a document you then obtained during
19 that site inspection?

20 A. Yes.

21 Q. What generally is the information -- who gave
22 you this document?

23 A. Mr. Kamholz.

24 Q. Okay. And what generally is -- information is
25 being provided to the DEC in this document?

1 A. This is a required -- the federal regulation
2 required a plan -- every facility subject to
3 federal regulations of this sort was required to
4 submit a plan for what they would do if there was a
5 startup, shutdown, or malfunction at their
6 facility. And this is Tonawanda Coke's startup,
7 shutdown, and malfunction plan.

8 Q. All right. Is there any mention regarding
9 whether unburned coke oven gas is released to the
10 atmosphere in this document?

11 MR. PERSONIUS: Well, your Honor, I -- I'm
12 trying to think how I'd frame my objection. No
13 foundation would be my objection.

14 THE COURT: Well, the document's in
15 evidence. The question is, does it contain any
16 information with respect to startup, shutdown,
17 right?

18 MR. PERSONIUS: No. It was does it have
19 anything in it about coke oven gas being emitted
20 into the atmosphere. And my objection is
21 foundation. I think that's the proper objection.
22 I could give you an example of what I mean, but --

23 THE COURT: I'll overrule.

24 MR. PERSONIUS: A generic one.

25 THE COURT: Pardon me?

1 MR. PERSONIUS: I could give you a generic
2 example, but --

3 THE COURT: All right.

4 MR. PERSONIUS: Does it talk about
5 elephants? I mean, that's what I mean by
6 foundation.

7 MR. MANGO: Well, your Honor, I'm asking
8 this witness's knowledge of the document. That's
9 establishing the foundation.

10 THE COURT: So what -- whether it
11 contains? I'm not -- I'm not sure, with respect to
12 that objection, whether it applies here,
13 Mr. Personius. I'll overrule the objection.

14 MR. PERSONIUS: Okay.

15 THE COURT: Does this contain a reference
16 to coke oven gas? Is that what you're saying?

17 MR. MANGO: Unburned coke oven gas being
18 released to the atmosphere. That was the question.

19 BY MR. MANGO:

20 Q. Mr. Sitzman, does it contain a reference --

21 A. Yes, it does.

22 Q. Okay. Can you just put a little dot or --
23 where that reference is and describe what your
24 understanding of the reference relates to.

25 A. In -- in the third paragraph of the document

1 here -- I guess I can draw it. That's the third
2 paragraph. That starts, "Malfunction of coke oven
3 gas processing equipment." The last sentence, it
4 says, "Unburned coke oven gas is not flared or
5 vented."

6 Q. Okay. So that -- this information contained in
7 this document, is there any requirement that you're
8 aware of in times of operation failure whether coke
9 oven gas needs to be flared if it's going to be
10 released in the atmosphere?

11 A. There is a requirement in the federal
12 regulation that the coke battery have installed on
13 it an emergency bypass flare for such situations
14 when there would be a failure in operation.

15 Q. Okay. And do you know if that emergency bypass
16 flare has to have a pilot light associated with it?

17 A. Yes, it does.

18 Q. Okay. On August 21st, 2008, did you notice any
19 violations relating to that pilot light?

20 A. Yes, we did.

21 Q. Okay. Tell the jury what -- what you learned.

22 A. We learned during that inspection that the
23 pilot light was not operating.

24 Q. Okay. During that inspection were you told
25 that the pilot light had not been operating for a

1 period of approximately 15 years?

2 A. No.

3 Q. What, if anything, did you do as a result of
4 the violation you noticed?

5 A. We notified the company verbally that a pilot
6 was required by regulation, and followed that up
7 with a notice of violation.

8 Q. Okay. I'd like to -- we can take that down.
9 Thank you, Lauren.

10 I'd like to go back to Government Exhibit 131,
11 which is that HAP study that you discussed. Do you
12 remember that?

13 A. Yes.

14 Q. Okay. Let's pull that up on the screen. Did
15 you review this document prior to testifying here
16 today?

17 A. Yes, I did.

18 Q. All right. And I'd like to show you Section 4
19 of this document.

20 It's page 23, Lauren, for your purposes.

21 This is Section 4, and it says 4-1 at the
22 bottom, is that correct?

23 A. Correct.

24 Q. And the title is Emissions From By-Product
25 Plant Equipment Components, is that right?

1 A. Correct.

2 Q. All right. If we could go to the next page,
3 4-2.

4 Do you see this page here, Mr. Sitzman?

5 A. Yes, I do.

6 Q. Okay. If we could just focus on that, please.

7 Okay. In this table do you see the by-products
8 plant area and a section for coke oven gas system?

9 A. Yes, I do.

10 Q. And do you see the reference in the coke oven
11 gas system to a pressure-release valve?

12 A. Yes.

13 Q. All right. If we could go to the next page,
14 please, page 4-3.

15 Do you see that same by-products plant area,
16 the coke oven gas system listed?

17 A. Yes.

18 Q. How much benzene, toluene, or xylene is listed
19 as coming out of the coke oven -- the whole coke
20 oven gas system in a year, based on this table?

21 A. Zero.

22 Q. Mr. Sitzman, can you tell the jury when the
23 first time you recall seeing this document?

24 A. In 2003 when it was submitted.

25 Q. All right. What was the purpose of your review

1 in 2003 of this document?

2 A. At that time it was submitted to totalize the
3 emissions of hazardous air pollutants for the
4 facility, to determine the status of the facility,
5 whether it was major or minor for hazardous air
6 pollutants. Major and minor is -- major hazardous
7 air pollutant facility is defined as emitting per
8 year more than 10 tons of one hazardous air
9 pollutant or 25 tons of total hazardous air
10 pollutants. And at the time, that was submitted to
11 determine if the facility was subject to the new
12 coke oven federal regulation.

13 Q. Okay. And did you attempt to determine, based
14 on the numbers in this report, that the calculation
15 for the total HAPS was correct?

16 A. We looked at the report, looked at the totals.
17 At the time then it didn't -- I had questions
18 whether they would be minor for hazardous air
19 pollutants, being a coke plant itself. So we sent
20 it off to the experts at EPA that wrote the
21 regulations, and they confirmed back to us that, in
22 fact, the emissions were accurate for this facility
23 and it was minor for hazardous air pollutants.

24 Q. Okay. Did you have any independent
25 information, meaning aside from the information

1 contained in this HAP study, to check these numbers
2 against?

3 A. We would check them against the -- the
4 references that they were created by.

5 Q. So is it fair to say, at the time you're
6 reviewing this document you're trying to determine
7 whether it was major or minor for HAPS?

8 A. Yes. The entire facility.

9 Q. Okay. Now, after we just went through this
10 table here listing zero for benzene, toluene, or
11 xylene, did this table factor into your
12 calculations or not?

13 A. Well, no. Zero.

14 Q. So was there a need to focus on this table or
15 the previous table, which had that reference to
16 pressure-release valve -- was there a need to focus
17 on those two tables in the HAP report?

18 A. The emissions were very minor from these
19 operations. So the answer is, no, we didn't focus
20 on it.

21 Q. Did -- did your review of this document have
22 anything to do with determining whether there were
23 additional emission sources that needed a permit?

24 A. No.

25 Q. Would you consider this document proper notice

1 of an emission source not listed in the Title V
2 permit?

3 A. No.

4 Q. Okay. Why not?

5 A. You would have to submit an application for an
6 emission source not listed, and it would include
7 all of the descriptive mat -- descriptive
8 information for that emission source as part of a
9 permit application.

10 Q. All right. Lauren, if we can go to the
11 previous, the prior page here, 4-2. All right.

12 So, in this table does -- does this report give
13 you any information as to the location of the
14 pressure-release valve on the coke oven gas line --
15 or in the coke oven gas system? I'm sorry.

16 A. No.

17 Q. Does this report describe with any detail what
18 the pressure-release valve on the coke oven gas
19 system looked like?

20 A. No.

21 Q. So you mentioned you recall seeing this
22 in 2003?

23 A. Uh-huh.

24 Q. This document?

25 A. Correct.

1 Q. Do you recall in 2003 seeing the reference to
2 the pressure-release valve on the coke oven gas
3 system?

4 MR. LINSIN: Objection. Asked and
5 answered.

6 THE COURT: Sustained.

7 MR. MANGO: Your Honor, I believe I asked
8 whether he focused on the tables. I don't recall a
9 specific explicit question asking him if he saw
10 this pressure release valve in 2003. And it's just
11 that one --

12 THE COURT: I'm sorry?

13 MR. LINSIN: Your Honor, I guess we could
14 have it read back. You know, the answer, I assume,
15 will be the same, but the question, according to my
16 notes, was already asked and answered.

17 THE COURT: A while ago.

18 MR. LINSIN: Exactly.

19 THE COURT: That's where I think you did
20 ask it. But ask the question again, and we'll see
21 where we are.

22 BY MR. MANGO:

23 Q. All right. Mr. Sitzman, in 2003 do you
24 recall -- with specific reference to where I put
25 the arrow, pressure-release valve, do you recall

1 seeing that reference during your 2003 review?

2 A. No.

3 Q. Okay. This table on the screen here, do you
4 see this?

5 A. Yes.

6 Q. Okay. Do you see -- is there a footnote listed
7 for the pressure-release valve in this column?

8 A. Yes, there is.

9 Q. Are you familiar with the reference in that
10 footnote?

11 A. Yes, I am.

12 Q. Can you explain for the jury what your
13 understanding of what this reference in the
14 footnote is?

15 A. The reference is for the coke oven gas system
16 for all the components listed in this table, and it
17 says, "Emission factors for the coke oven gas
18 system are based on the refinery correlation
19 equations at a screening concentration of 200 parts
20 per million."

21 That, to determine what those emissions are, we
22 go back to the federal guidance documents for
23 emission inventory development. EPA creates for
24 both industry and government use a compilation of
25 emission information from many different

1 industries. And there happens to be one for the
2 coke oven industry. The document is called, in
3 general, AP 42. The section here is coke plants.

4 AP 42 contains a lot of these emission factors
5 so you can determine what your emissions are from
6 the facility if you don't have testing at your
7 facility. And a lot of components you can't really
8 test, or you would probably go out of business
9 spending the money to test it all.

10 In this case, in AP 42 it refers to another
11 document called the Protocol For Determining
12 Emission Leak Rates, and that was used in this case
13 to come up with this value for this pressure-relief
14 valve. Indicated that it was leaks from the valve
15 as opposed to process emissions.

16 Q. Okay. So your understanding of this footnote
17 indicates that the reference to pressure-release
18 valve was for a leaking valve?

19 A. Correct.

20 Q. All right. Let's focus on -- we can take that
21 down. Thank you, Lauren.

22 Did there come a time in April of 2009 that you
23 participated in a joint EPA-DEC inspection at the
24 Tonawanda Coke Corporation?

25 A. Yes, I did.

1 Q. All right. Tell the jury when that inspection
2 was.

3 A. The inspection occurred from April 14th to
4 April 21st.

5 Q. And how did that inspection come about?

6 A. EPA scheduled an inspection, and we
7 participated with them in the inspection.

8 Q. Can you describe what you did during that
9 inspection?

10 A. During -- well, we arrived at the facility. We
11 had an opening conference with plant personnel in
12 the office, proceeded to the inspection. Over
13 several days, split into various groups to inspect
14 the facility. And EPA took many samples throughout
15 the facility during the inspection. And when we
16 completed the inspection, we reconvened with
17 facility representatives for a final meeting to go
18 over our inspection findings before we left.

19 Q. Okay. Were you there all -- all of the days of
20 the inspection?

21 A. No, I don't believe I was.

22 Q. Okay. Why not?

23 A. I was the regional air engineer, and I had
24 other duties to attend to. I was only there part
25 of the time.

1 Q. Was DEC represented during the inspection?

2 A. Yes. There was always a DEC person there.

3 Q. Okay. It was either you or who?

4 A. It was either Cheryl Webster and I or Cheryl
5 Webster by herself.

6 Q. All right. Now, we've been talking about the
7 east quench tower, this quench tower number 2.
8 During the April of 2009 inspection, did you learn
9 anything relating to this quench tower number 2,
10 the east quench tower?

11 A. Yes. During the inspection Cheryl informed me
12 that they had found that there was no baffles in
13 quench tower number 2.

14 Q. Okay. Did you raise that issue with anyone?

15 A. I remember asking Mr. Kamholz about it and
16 mentioning that, you know, we had sent him a letter
17 specifically saying they needed baffles. And he
18 agreed that he had the letter, but that was the end
19 of our conversation.

20 Q. Did he provide any type of response beyond
21 that?

22 A. Not that I remember.

23 Q. Did he give you any explanation for why there
24 were no baffles in quench tower number 2?

25 MR. PERSONIUS: Your Honor, object. It's

1 already been asked and answered.

2 THE COURT: I'll permit it. Overruled.

3 THE WITNESS: No, he did not.

4 BY MR. MANGO:

5 Q. Was there any discussion regarding that the
6 tower was exempt from the baffle condition?

7 A. No.

8 Q. Was there any discussion that your DEC
9 inspectors had authorized the use of this tower
10 without baffles?

11 MR. PERSONIUS: Your Honor, I object.
12 This has been covered.

13 THE COURT: Yeah. I mean, there was no
14 response, no discussion. Sustained.

15 BY MR. MANGO:

16 Q. Based on your knowledge of Condition 97 of
17 Tonawanda Coke's Title V permit -- do you remember
18 that condition we went through?

19 A. Yes.

20 Q. All right. Is the operation of the east quench
21 tower without baffles a violation of that condition
22 of the permit?

23 MR. PERSONIUS: Your Honor, that's been
24 asked and answered many times.

25 THE COURT: Yes. Sustained.

1 MR. MANGO: When did you first learn that
2 Condition 97 of the Title V permit was being
3 violated by the Tonawanda Coke Corporation?

4 MR. PERSONIUS: That's also been asked and
5 answered, Judge.

6 THE COURT: I'm not sure it is.
7 Overruled. I'll let that question stand.

8 THE WITNESS: During the April 2009
9 inspection with EPA.

10 BY MR. MANGO:

11 Q. Okay. Now, we've been talking about this
12 bleeder/pressure-release valve in the by-product
13 area in the coke oven gas line, right?

14 A. Yes.

15 Q. During this April of 2009 inspection, did you
16 learn of such bleeder valve in operation at
17 Tonawanda Coke?

18 A. Yes, we did.

19 Q. Okay. How -- if you can tell the jury, how do
20 you recall learning about it?

21 A. We were inspecting the by-products area, and
22 somebody in the group noticed that component and
23 wanted to go investigate it.

24 Q. Okay. When do you first remember seeing the
25 bleeder/pressure-release valve in question here?

1 A. Reviewing my notes, on April 20th I drew a
2 picture of that valve in my notes.

3 Q. Do you have any recollection today as to why
4 you drew that picture in your notes?

5 A. I think it was -- no, I have no recollection.
6 I think it was something we had to revisit.

7 Q. Okay. Is there anything in your notes for
8 Friday, April 17th, relating to the
9 pressure-release valve/bleeder valve?

10 A. No.

11 Q. Is there anything in your notes for April 21st,
12 the Tuesday, for the pressure-release valve?

13 A. Yes.

14 Q. All right. What do you -- what do you recall,
15 if anything, happening on April 21st?

16 A. On the 21st we looked at the valve again and
17 looked inside the cabinet on the ground, that you
18 described as green, looked inside that cabinet
19 because that's where the -- the parameters of the
20 valve were monitored from.

21 And on that day Mr. Kamholz and Pat Cahill, the
22 maintenance manager, explained what those charts
23 meant, to me, what they were recording. That there
24 was system pressure being recorded on one. As I
25 looked at it, I asked Pat what the -- the valve was

1 set at, and my notes said it was set at 130
2 centimeters.

3 In looking at the charts, it looked like every
4 half hour the valve was popping off, releasing.
5 And Mr. Kamholz mentioned that he thought that
6 those spikes were related to the battery reversing,
7 which is part of the operation of heating the
8 battery, and for momentarily the gas stops when
9 they go through a reversal of burning.

10 Q. Okay. Did Mr. Kamholz give you any other
11 information other than that, that you recall,
12 relating to reversing? Or was -- did Pat Cahill
13 provide you information?

14 A. After -- after they described it all, they
15 didn't provide more information.

16 Q. Okay. So you did review the circular charts
17 that you said --

18 A. The circular chart that was inside, yes, I
19 reviewed that.

20 Q. Did you discuss the possibility of raising the
21 set point?

22 A. After we saw that and I realized it was going
23 off every half an hour, I spoke to Mr. Cahill and
24 Mr. Kamholz and asked them if they could either
25 adjust the valve to a higher set point so it didn't

1 go off every half an hour, or I knew also they
2 control the pressure in the whole gas main system.
3 Asked if they could lower the pressure. And they
4 told me at the time they would check into that.
5 They thought they probably could, so they would --
6 they were busy with the inspection, but after the
7 inspection they would see if they could adjust the
8 settings.

9 Q. Were you present during the closing conference?

10 A. Yes, I was.

11 Q. Was this pressure-release valve/bleeder valve
12 discussed?

13 A. My notes show that --

14 MR. LINSIN: Objection, hearsay.

15 THE COURT: At this point sustained.

16 BY MR. MANGO:

17 Q. Mr. Sitzman, do you recall the
18 pressure-release/bleeder valve being discussed
19 during the closing conference?

20 A. I have an entry in my notes that it was.

21 MR. LINSIN: Objection, hearsay.

22 THE COURT: Sustained.

23 BY MR. MANGO:

24 Q. Do you have a recollection today, sitting on
25 the stand, whether the pressure-release

1 valve/bleeder valve was discussed at the closing
2 conference?

3 A. No, I do not.

4 Q. Okay. Is there any document, Mr. Sitzman, that
5 would assist in your recollection of whether the
6 pressure-release valve/bleeder valve was discussed
7 during the closing conference?

8 A. My notes.

9 MR. MANGO: Your Honor, if I may have a
10 moment?

11 THE COURT: Yes.

12 MR. MANGO: Your Honor, I'd like to pull
13 up for identification purposes Government
14 Exhibit 3560.61.

15 If we could go, please, Lauren, to page 7 of
16 that document.

17 THE COURT: 3560.61?

18 MR. MANGO: 3560.61, yes, for
19 identification, and go to page 7.

20 BY MR. MANGO:

21 Q. Now, Mr. Sitzman, I want you to review this
22 document. If you need it zoomed, let me know, and
23 when you're ready, please look up.

24 Okay. Did you have a chance to review that?

25 A. Yes.

1 Q. What is this document I'm showing you?

2 A. These are my notes.

3 MR. LINSIN: Your Honor, I would ask if
4 the question is going to be posed again, the
5 document would be removed from the screen, as we've
6 done with each witness, and the witness be asked if
7 he now has a present recollection of what was
8 discussed at the closeout meeting.

9 THE COURT: Okay. And that's fair enough.
10 And that's the proper protocol under 612.

11 BY MR. MANGO:

12 Q. Yes, we can take that down.

13 Mr. Sitzman, did you review the document that
14 was up on your screen?

15 A. Yes.

16 Q. And did that document refresh your recollection
17 as to whether the pressure-release valve/bleeder
18 valve was discussed at the closing conference in
19 your April inspection?

20 A. Yes, it was.

21 Q. Okay. And what was the document that I showed
22 you?

23 A. That was my notes where I noted everything
24 discussed --

25 THE COURT: Is there an objection?

1 MR. LINSIN: Your Honor, I do object again
2 to the voiring of the testimony through the notes.
3 I would ask that we focus on the witness's present
4 recollection.

5 THE COURT: After having been refreshed?

6 MR. LINSIN: Exactly. Yes.

7 THE COURT: Thank you.

8 MR. MANGO: Yes, your Honor.

9 BY MR. MANGO:

10 Q. Mr. Sitzman, you mentioned that your
11 recollection has now been refreshed by reviewing
12 that document, is that correct?

13 A. Correct.

14 Q. Okay. Can you tell the jury now with your
15 refreshed recollection whether the pressure-release
16 valve/bleeder valve was discussed during the
17 closing conference?

18 A. Yes, it was.

19 Q. Okay. And what was discussed?

20 A. It was discussed that we would have to look
21 into it further. It was an issue for follow-up.

22 Q. Now, you mentioned that you had previously
23 asked whether they could look into raising the set
24 point on this bleeder/pressure-release valve?

25 A. Yes.

1 Q. Okay. Do you know if that ever happened?

2 A. I recollect that I learned a couple of days
3 later that, yes, in fact, it had been adjusted.

4 Q. Okay. Do you remember how you learned that?

5 A. No, I don't.

6 Q. Did you go to the plant and inspect it?

7 A. I don't remember.

8 Q. Okay. How certain of you -- how certain are
9 you that -- I'm sorry. Can you say with certainty
10 here today that the pressure-release valve -- that
11 you know personally was -- the set point was
12 raised?

13 MR. LINSIN: Your Honor, he just said he
14 doesn't know how he recalls it. I would object to
15 the question being posed again in this fashion.

16 THE COURT: Okay. Yeah. I'll sustain the
17 objection.

18 MR. MANGO: Mr. Sitzman, do you know if
19 that recollection was based on conversations you
20 may have had with any Tonawanda Coke personnel?

21 MR. LINSIN: Objection.

22 THE COURT: Sustained.

23 MR. MANGO: Your Honor, may I have a
24 moment?

25 THE COURT: Yes.

1 MR. MANGO: Thank you, your Honor.

2 BY MR. MANGO:

3 Q. Did you have any conversations with any plant
4 personnel regarding the bleeder/pressure-release
5 valve after this closing conference?

6 A. Yes.

7 Q. Okay. And based on those conversations, what
8 do you believe happened to the set point for the
9 bleeder/pressure-release valve?

10 MR. PERSONIUS: Objection, your Honor.

11 THE COURT: Grounds?

12 MR. PERSONIUS: Foundation.

13 THE COURT: No. Overruled.

14 BY MR. MANGO:

15 Q. You can answer.

16 A. Could you repeat the question, please?

17 Q. Sure. Based on those conversations -- I'm
18 going to try to get this right here. Based on
19 those conversations you had with plant personnel
20 regarding the setting on the pressure-release
21 valve, do you believe the set point for the
22 pressure-release valve was raised?

23 A. I believe changes were made to stop the
24 releases from that valve, yes.

25 Q. Okay. Okay. I'd like to pull up Government

1 Exhibit 131 back again, which is the HAP study.

2 Mr. Sitzman, do you recall this?

3 A. Yes.

4 Q. I'd like to go to page 2-1 of this exhibit,
5 please. It's actually 2-10. I'm sorry. 2-10.

6 I'd like to focus in -- is there a section that
7 relates to quenching?

8 A. Yes.

9 Q. If you could just read this paragraph, please,
10 and then I'll ask you the next question.

11 A. "Particulate emissions from quenching" --

12 Q. Well, I'm sorry. I meant to yourself,
13 Mr. Sitzman.

14 A. Oh. Good. Thank you.

15 Okay.

16 Q. Okay. Do you recall, is there a mention in
17 this section that the quench towers at Tonawanda
18 Coke actually do have baffles?

19 A. Yes. The sentence starting right there. It
20 says directly, "The Tonawanda Coke quench tower has
21 baffles for control of PM emissions."

22 Q. Okay. All right. Thank you. We can pull that
23 down.

24 Now, let's go back quickly to the pilot light
25 that you discussed that you observed not being on.

1 Who told you that the pilot light was not
2 operational?

3 A. Mr. Kamholz.

4 Q. All right.

5 THE COURT: Put up 131 again, please.

6 No, that's not the right one. I'm sorry.

7 MR. MANGO: Do you want that page we just
8 read from, your Honor?

9 THE COURT: Yes. What page was that?

10 MR. MANGO: That was 2-10.

11 THE COURT: 2-10. And that had the
12 reference to the quenchers?

13 MR. MANGO: Yes. Right here, your Honor.

14 THE COURT: Okay. So the sentence you
15 pointed to with respect to baffles, Mr. Sitzman,
16 was the fourth line beginning with "the"?

17 THE WITNESS: Correct.

18 THE COURT: Okay. And then it references
19 one quench tower, singular, doesn't it?

20 THE WITNESS: Yes, it does.

21 THE COURT: Thank you.

22 BY MR. MANGO:

23 Q. Now, Mr. Sitzman I'd like to -- based upon the
24 information that you received regarding the use of
25 the bleeder/pressure-release valve on the coke oven

1 gas line in the by-products area that you learned
2 of in April of 2009, right? Based on the
3 information you received regarding that and your
4 review of the circular charts, should that have
5 been included in the Title V permit?

6 A. Yes, it should have.

7 Q. Was it included in the Title V permit?

8 A. No, it wasn't.

9 Q. And can you tell this jury whether the failure
10 to include it is a violation of Condition 4 of the
11 Title V permit?

12 A. Yes, it is.

13 Q. Okay. Tell the jury why you believe that.

14 A. Any emission source at a facility, unless it's
15 exempt or trivial, requires to be permitted by New
16 York State, and it has for many years.

17 Q. Based on your understanding of how this
18 pressure-release valve/bleeder valve operated, do
19 you believe it was a trivial or exempt activity?

20 A. No, it was not.

21 Q. In fact, if you learned that approximately
22 7,100 pounds per hour were released from that
23 bleeder every time it opened, would that affect
24 your consideration at all?

25 A. The way it was operated affected my

1 consideration. Process emissions were coming out
2 of the valve. It required a permit.

3 MR. MANGO: Your Honor, if I could have
4 one moment, please?

5 THE COURT: Certainly.

6 MR. MANGO: Thank you, your Honor.
7 Nothing further.

8 THE COURT: Okay. Okay. Unless you
9 object, ladies and gentlemen -- no objections?
10 Lunch is okay? All right. You can have lunch.
11 You must come back, and we'll start at
12 approximately 2:00 o'clock. Okay.

13 Don't discuss the case. Please keep your minds
14 open, and remember this case is important to both
15 sides. And I know you're working hard to stay with
16 this, so please continue to do that, and we'll see
17 you again after lunch. I guess it's still a nice
18 day out there, so please enjoy the time. Thank
19 you.

20 (Jury excused from the courtroom.)

21 THE COURT: Okay. Mr. Sitzman, you can
22 step down. See everybody at about 2:00 o'clock or
23 so, okay.

24 MR. LINSIN: Thanks, your Honor.

25 MR. MANGO: Thank you, your Honor.

1 THE COURT: You're welcome. Thank you.

2 (Lunch recess was taken.)

3 (Jury seated.)

4 THE COURT: Welcome back, ladies and
5 gentlemen. Please have a seat.

6 Okay. We're reassembled. The attorneys and
7 parties are back present. Ladies and gentlemen,
8 you are here, roll call waived. And we have
9 Mr. Larry Sitzman on the stand, and he remains
10 under oath. I think we're about ready to start
11 cross-examination. Okay.

12 All right, Mr. Linsin, I think you're on.

13 MR. LINSIN: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. LINSIN:

15 Q. And good afternoon, Mr. Sitzman.

16 A. Good afternoon.

17 Q. I don't believe we've met before, sir. My name
18 is Greg Linsin. I represent Tonawanda Coke
19 Corporation.

20 A. Nice to meet you.

21 Q. Mr. Sitzman, you testified on direct
22 examination, I believe, that you began working in
23 DEC's Division of Air Resources in 1978, is that
24 correct?

25 A. Correct.

1 Q. And you were with that division for two years,
2 and then you did a -- about a one-year stint in the
3 Water Division, is that correct?

4 A. Roughly, yes.

5 Q. Now, when you joined the Division of Air
6 Resources, you joined as an Environmental Engineer
7 I, is that correct?

8 A. Correct.

9 Q. And at that time was there a technician working
10 in that division by the name of Gary Foersch?

11 A. At that time I worked in the Albany office.

12 Q. You were in the Albany office. I see. You
13 didn't know Mr. Foersch at that time?

14 A. Correct.

15 Q. So the first time you worked in that division
16 in Buffalo was in 1991? Is that your recollection?

17 A. Yes. Summer of 1991.

18 Q. All right. And you then joined the Buffalo
19 office as an Environmental Engineer II in that
20 year, in 1991, correct?

21 A. I was still an Environmental Engineer I, but I
22 had passed the professional engineer's exam and was
23 working towards a promotion.

24 Q. All right. And was it at that time then that
25 you became acquainted with Mr. Foersch?

1 A. Yes.

2 Q. And he was then a technician in that Buffalo
3 office of the Division of Air Resources, correct?

4 A. Correct.

5 Q. And what was your relationship to him? I mean,
6 you were an engineer in the office, he was a
7 technician, is that correct?

8 A. Correct.

9 Q. And did you supervise him with respect to the
10 work he conducted or inspections he conducted
11 concerning facilities?

12 A. Not at that time.

13 Q. When did you first take on supervisory
14 responsibilities for Mr. Foersch?

15 A. It was sometime in 1993.

16 Q. And what changed that you then became more of
17 his supervisor than just an associate?

18 A. By then I was an Environmental Engineer II, and
19 I also -- a couple of staff left, moved on to other
20 jobs, and we shrunk a little bit and had to realign
21 facilities and duties.

22 Q. So in 1993 then, when you assumed those
23 additional duties of supervising Mr. Foersch and
24 the work he was doing at the facilities he was
25 working with, was that your first at least

1 supervisory contact with the Tonawanda Coke
2 facility?

3 A. I was his supervisor, yes, but I really didn't
4 go to the facility for several years after that.

5 Q. I understand that your first on-site visit was
6 later in the '90s.

7 A. Yes.

8 Q. But my question is, in 1993 you knew that one
9 of the facilities that Gary Foersch was responsible
10 for inspecting was the Tonawanda Coke facility,
11 correct?

12 A. Yes, I did.

13 Q. And as his supervisor, did you oversee and
14 discuss with him the inspections he was conducting,
15 the plans for those inspections, and the results of
16 those inspections?

17 A. Yes.

18 Q. And in order to perform your duties as
19 Environmental Engineer II and now taking over
20 responsibilities involving the supervision of Gary
21 Foersch, did you review the Division of Air
22 Resources file regarding the Tonawanda Coke
23 Corporation?

24 A. I don't believe I did.

25 Q. Did you know, when you first started

1 supervising Gary Foersch, that he had been
2 inspecting the Tonawanda Coke Corporation back as
3 early as 1978?

4 A. Yes.

5 Q. All right. And did you talk with Mr. Foersch
6 about the nature of those inspections, the results
7 of those inspections, the general compliance
8 history of this facility?

9 A. Yes.

10 Q. All right. May I please have Government's
11 Exhibit 3521.10 for identification.

12 Now, do you see the exhibit sticker 3521.10 in
13 the upper right-hand corner, sir?

14 A. Yes, I do.

15 Q. Do you recognize this document?

16 A. Yes.

17 MR. LINSIN: Your Honor, absent objection,
18 I would move this document into evidence.

19 MR. MANGO: No objection, your Honor.

20 MR. PERSONIUS: No objection.

21 THE COURT: Okay. 3521.10 received, no
22 objection. Do you want it published?

23 MR. LINSIN: Yes, please, your Honor.

24 THE COURT: And it may be published
25 please.

1 (Government's Exhibit 3521.10 was received
2 into evidence.)

3 MR. LINSIN: And if we could just enlarge
4 the top half of the document, please. Thank you.

5 BY MR. LINSIN:

6 Q. Now, you're copied on this document. You're
7 not the author of this document, correct?

8 A. Correct.

9 Q. And in the -- it's an internal DEC memorandum,
10 correct?

11 A. Correct.

12 Q. And it is authored by Gary Foersch and
13 initialed by him, correct?

14 A. Correct.

15 Q. And directed to Mr. Michael Podd with the HWR,
16 is that correct?

17 A. Correct.

18 Q. And what was HWR?

19 A. I believe it's Hazardous Waste Remediation.

20 Q. All right. And is it an accurate general
21 summary to say that this is a communication from
22 the Division of Air Resources to the Hazardous
23 Waste and Remediation Office regarding the
24 regulatory history for Tonawanda Coke with respect
25 to Clean Air Act compliance?

1959

1 A. Yes.

2 Q. And do you know why this memorandum was
3 written?

4 A. No, I don't recollect why.

5 Q. I'm going to ask you to take a look at the --
6 well, the first paragraph indicates that it is
7 being written in response to a request from
8 Mr. Podd that you review your Division of Air
9 Resources files for this facility, correct?

10 A. Correct.

11 Q. And then the second paragraph talks about the
12 general regulatory status of the facility, correct?

13 A. For all 23 air contamination source, yes.

14 Q. And that those sources were operating in
15 compliance with your department's regulation,
16 correct?

17 A. At that time, correct.

18 Q. And that the permits were valid through
19 December 1, 1994, correct?

20 A. Correct.

21 Q. And would you read, please, the last paragraph
22 of this memorandum?

23 A. "The firm historically has been in compliance
24 with our regulations, with only an occasional upset
25 or malfunction causing any problems."

1 Q. And is it fair to say, Mr. Sitzman, that that
2 quick summary provided in this memorandum is
3 consistent with the information you had learned in
4 your discussions with Gary Foersch concerning his
5 oversight of the Tonawanda Coke facility on behalf
6 of the Division of the Air Resources?

7 A. That was Mr. Foersch's opinion.

8 MR. MANGO: Objection, your Honor, to
9 that. I guess it's asked and answered. I'll let
10 it stand.

11 THE COURT: You don't have to guess. It
12 was.

13 MR. MANGO: Yeah, well, I was going to
14 object what Mr. Foersch's opinion was, but it was
15 asked and answered, so I'll withdraw.

16 THE COURT: All right.

17 BY MR. LINSIN:

18 Q. All right. If we can pull this down, please.

19 Now, three years after that memorandum, if I
20 have the chronology correctly, Tonawanda Coke
21 submitted its initial Title V application, correct?

22 A. Correct.

23 Q. And you testified that you were involved in the
24 review of that application, is that right?

25 A. I was involved in the review of that

1 application, correct.

2 Q. After it was processed and punched in and you
3 got it back in digital form, is that correct?

4 A. Correct.

5 Q. And as a -- now, that application remained
6 under consideration by the Division of Air
7 Resources for approximately five years, correct?

8 A. Correct.

9 Q. All right. If I may have Defendant's Exhibit
10 HHH, please, for identification.

11 Now, as Miss Henderson is calling that up, do
12 you recall, yourself, conducting an inspection of
13 the Tonawanda Coke facility in October of 1999?

14 A. I don't recall that date offhand, but --

15 THE COURT: HHH?

16 MR. LINSIN: For identification.

17 THE COURT: Okay. For identification.

18 Thank you.

19 BY MR. LINSIN:

20 Q. Ask you to take a look at this document and,
21 first of all, state whether you can identify it.

22 A. It's a printout of the inspection detail report
23 from our AFS computer system for a completed
24 inspection at the facility.

25 Q. And the facility is the Tonawanda Coke

1 facility?

2 A. Correct.

3 Q. All right. Your Honor, I would move -- and the
4 date -- I'm sorry -- of the inspection?

5 A. The date of the inspection was October 25th,
6 1999.

7 MR. LINSIN: All right. I would move
8 Defendant's Exhibit HHH into evidence, your Honor.

9 MR. MANGO: Your Honor, subject to some
10 relevance to this witness, whose name does not
11 appear anywhere on this document, we would object.

12 THE COURT: Okay. I mean, this comes
13 within the ambit of his jurisdiction at the time,
14 but as far as this document is concerned?

15 BY MR. LINSIN:

16 Q. Mr. Sitzman, this document -- the entry in the
17 computer system was made by Mr. Gary Foersch, is
18 that correct?

19 A. Yes.

20 Q. All right. Now, do you recall that the
21 inspection that is referenced in this document on
22 October 25th, 1999, was conducted by yourself,
23 Miss Webster, and Mr. Foersch?

24 A. No.

25 Q. You didn't conduct an inspection of the

1 facility on this date?

2 A. Generally, looking at what you presented to me,
3 it only says Gary was there. Our computer system
4 has -- can list as many staff as was there.

5 Q. Let me ask my question again. And let's just
6 take this document down, please. My question,
7 Mr. Sitzman, is, do you remember -- not what the
8 document says -- do you remember being present at
9 an inspection for an inspection at the Tonawanda
10 Coke facility on October 25th, 1999?

11 MR. MANGO: I'm going to object, your
12 Honor. Asked and answered. He said he didn't
13 remember.

14 THE COURT: It's a little confusing right
15 now, so let's find out what you do remember,
16 please. Overruled.

17 THE WITNESS: I do not remember being at
18 that inspection.

19 BY MR. LINSIN:

20 Q. You testified on direct examination that your
21 first visit to the Tonawanda Coke facility was in
22 the mid-'90s, I believe you testified, is that
23 correct?

24 A. Correct.

25 Q. When was that, sir?

1 A. In the mid-'90s sometime.

2 Q. You testified on direct examination that you
3 reviewed the regulatory history of this facility
4 before testifying today, correct?

5 A. Correct.

6 Q. Did you identify through your review of those
7 records when was the first time you inspected this
8 facility?

9 A. No.

10 Q. Does it fit with your recollection,
11 Mr. Sitzman, that in 1999 a review of this facility
12 was conducted on behalf of the Division of Air
13 Resources?

14 A. I don't know what you mean by a review.

15 Q. An inspection.

16 A. An inspection should have been conducted, yes.

17 Q. Does it fit with your memory that it was
18 conducted?

19 A. It fits. I say that because every major
20 facility needed an annual inspection, and we always
21 did ours in Buffalo, so it would have been done.

22 Q. And is your recollection about the inspection,
23 the '99 inspection -- is your recollection
24 refreshed by having reviewed the document that was
25 just on the screen, Defendant's Exhibit HHH for

1 identification?

2 A. I still don't remember if I was there or not.

3 Q. No, not whether you were there. My question
4 now is, do you remember that one was done in
5 October of '99 as your memory is refreshed having
6 reviewed the document?

7 A. According to that document, one was done.

8 Q. Do you recall, Mr. Sitzman, that in October of
9 1999 that an inspection was conducted at the
10 facility to review that facility's Title V
11 application, to conduct a plant tour, to determine
12 how the facility's 303 inspections were being
13 performed, and to request that the facility supply
14 your office with copies of the 303 inspection
15 reports?

16 A. I don't remember the exact date, but I know
17 that inspection was done.

18 Q. All right. So this would have been while the
19 application was pending and before the -- your
20 office had made a decision as to whether or not a
21 permit was going to be issued, correct?

22 A. Correct.

23 Q. Now, may I please have Government's Exhibit 92
24 for identification.

25 Do you see the exhibit sticker at the bottom

1 right-hand corner of the document Government's
2 Exhibit 92, sir?

3 A. Yes.

4 Q. All right. And do you recognize what this is?

5 A. This is a permit transmittal letter of an air
6 state facility permit for Tonawanda Coke,
7 December 8th, 2000.

8 Q. Now, is it accurate -- this is still during the
9 period of time that DEC is reviewing the Title V
10 permit application, correct?

11 A. Correct.

12 Q. And is it accurate that this would be one of
13 the Air 100 permits that you testified about on
14 direct examination?

15 A. It's -- it's possible. I haven't seen the
16 permit, but --

17 MR. LINSIN: All right. Your Honor --
18 well, at this point I would move Government's
19 Exhibit 92 into evidence.

20 MR. MANGO: Your Honor, if we could scroll
21 through the rest of the pages.

22 No objection, your Honor.

23 MR. PERSONIUS: No objection, your Honor.

24 THE COURT: Okay. Government's Exhibit 92
25 received, no objection.

1 (Government's Exhibit 92 was received into
2 evidence.)

3 MR. LINSIN: May it be published, your
4 Honor?

5 THE COURT: Yes, it may. First page?

6 MR. LINSIN: First page initially.

7 BY MR. LINSIN:

8 Q. Now, you are copied on this document as well,
9 sir, is that correct?

10 A. Correct.

11 Q. As is Miss Webster, correct?

12 A. Correct.

13 Q. And she at that point was a -- an engineer in
14 the Division of Air Resources, correct?

15 A. Correct.

16 Q. And the -- this is a cover letter signed by
17 whom?

18 A. Richard Sweeney, Deputy Regional Permit
19 Administrator.

20 Q. And if we can then move to the next page,
21 please. And let's just enlarge the text on the
22 page and see if we can improve our -- the permit is
23 issued to Tonawanda Coke facility, correct?

24 A. Correct.

25 Q. And from this cover page can you tell the

1 effective date of the permit is December 4th, the
2 year 2000?

3 A. Yes.

4 Q. All right. Now, if we could move to the --
5 what is, I believe, page 14 in the exhibit, please.
6 And if we can enlarge that portion.

7 I'm sorry. This is not the page. It is
8 Condition 14 I'm looking for. And I'll go to my
9 default, the page 7 of 13 of the document. Let's
10 start here, the very bottom, to get the title of
11 Condition 14.

12 Do you see that, the reference to that
13 condition?

14 A. Yes.

15 Q. And what is a coke oven gas desulfurizer or
16 actifier?

17 A. It was operated to remove sulfur from the coke
18 oven gas stream.

19 Q. This is a condition that relates to the
20 deactivation or shutdown of that piece of
21 equipment?

22 A. Correct.

23 Q. All right. And if we could go to the next page
24 and enlarge the -- yes. Thank you.

25 Now, is it accurate to say that this Item 14.1

1 on this page discusses the management of coke oven
2 gas at the Tonawanda Coke facility and the
3 potential effects from the shutdown of this
4 actifier?

5 A. Yes.

6 Q. And would you read -- please read the first
7 paragraph, please?

8 I'm sorry. Read it out loud.

9 A. Okay. "Coke oven gas is recovered from the
10 coke oven battery and purified for reuse as an
11 underfire fuel at the battery. The current
12 purification process includes the actifier emission
13 unit, which regenerates a sodium carbonate solution
14 from the desulfurizer by removing hydrogen sulfide
15 and emitting it to the atmosphere."

16 THE COURT: Slow down just a little bit,
17 please.

18 THE WITNESS: Okay. "Removing the
19 actifier from the coke oven gas purification
20 process would increase the sulfur content of the
21 coke oven gas sent back to the battery for reuse
22 above the 0.5 grain limit found in 6NYCRR Part 214.
23 The increased sulfur content of the underfire fuel
24 translates to increased sulfur dioxide emissions
25 from the battery's waste heat stack. The maximum

1 increase in sulfur dioxide emissions from the waste
2 heat stack is 240 pounds per hour."

3 BY MR. LINSIN:

4 Q. Is it accurate to say, Mr. Sitzman, that this
5 paragraph and the ones that follow summarize the
6 Division of Air Resources' understanding of how the
7 Tonawanda Coke facility was managing the coke oven
8 gas after it came through the by-products area?

9 A. Does this describe the effect of the additional
10 sulfur --

11 Q. We will get to that in a moment. But it talks
12 about the purification process and then its reuse
13 as an underfire fuel, correct?

14 THE COURT: As a what? I'm sorry.

15 MR. LINSIN: As an underfire fuel. In the
16 first line.

17 THE WITNESS: Correct.

18 BY MR. LINSIN:

19 Q. Okay. And is it -- is it accurate to say that
20 based on -- and you're welcome to read the entire
21 text, but the Division of Air Resources determined
22 that the shutdown of this actifier might slightly
23 increase the sulfur dioxide emissions, but it would
24 also achieve a significant reduction in the
25 hydrogen sulfide emissions from the heat stack of

1 the battery?

2 A. It would increase the sulfur dioxide from the
3 heat stack and eliminate the hydrogen sulfide from
4 the actifier. Correct.

5 Q. Okay. And so this proposal to deactivate that
6 piece of equipment was granted because your office
7 determined it was worth the tradeoff to achieve
8 that reduction in hydrogen sulfide emissions,
9 correct?

10 A. Correct.

11 Q. May I now please have Government's
12 Exhibit 18.18.

13 THE COURT: All right. That's already in
14 evidence?

15 MR. LINSIN: Yes, I'm sorry. Already in
16 evidence. 18.18.

17 BY MR. LINSIN:

18 Q. You testified about this document on direct
19 examination. Do you recognize this as the cover
20 page for the Tonawanda Coke facility's Title V
21 permit?

22 A. Yes.

23 Q. All right. Now, you were asked some questions
24 about the conditions in this permit that related to
25 the quench towers, correct, on direct examination?

1 A. Correct.

2 Q. If we may go to page 22 of this exhibit?

3 THE COURT: That's Bates stamp 22 as
4 opposed to document?

5 MR. LINSIN: Yes, your Honor. Large Bates
6 stamp. The exhibit page number.

7 THE COURT: Okay. Thank you.

8 BY MR. LINSIN:

9 Q. Now, I'm going to ask you to look to -- we can
10 go back to the title of this condition if you want,
11 but at Item 20.1, and see if you recognize this as
12 the first item in the condition regarding reopening
13 for cause.

14 A. Yes.

15 Q. All right. And the first portion of the
16 sentence under this condition states that "This
17 Title V permit shall be reopened and revised under
18 any of the following circumstances." Correct?

19 A. Correct.

20 Q. And when a permit like this uses the word
21 "shall," that is mandatory, correct?

22 A. Correct.

23 Q. And if you look, please, at romanette ii, that
24 provision states that the department -- so, the
25 permit shall be reopened and revised under any of

1 the following circumstances. The second one here
2 being that "The department or the administrator
3 determines that a permit contains a material
4 mistake or that inaccurate statements were made in
5 establishing the emissions standards or other
6 conditions of the permit," correct?

7 A. Correct.

8 Q. Now, you testified on direct examination that
9 the Division of Air Resources, in issuing this
10 permit, made a mistake by not including the
11 exemption for baffles concerning quench tower
12 number 1, correct?

13 A. Correct.

14 Q. And isn't it also true that even though that
15 mistake was made and later recognized, that there
16 was no effort on the part of the Division of Air
17 Resources to reopen or revise this permit after
18 that mistake had been recognized?

19 A. I don't remember the date when we found out
20 that the error had occurred, whether the permit was
21 at its expiration date or we had already extended
22 it because of all the activities we've been going
23 through for the last several years. So I don't
24 know when we discovered, we were told, whatever,
25 that that condition was wrong in the permit.

1 Q. Who discovered that, Mr. Sitzman?

2 A. I don't remember.

3 Q. Did you?

4 A. I don't remember.

5 Q. If we may go to page 16, please. And enlarge
6 the top portion of that page.

7 Now, you testified about this condition on
8 direct examination, correct?

9 A. Correct.

10 Q. And let me find my notes on that, if I might.

11 If I recall correctly, sir, you testified that
12 this condition requires -- that there is a
13 requirement for any existing source that was
14 subject to regulation be included in the permit, is
15 that correct?

16 A. Correct.

17 Q. And that if that occurs, the source owner must
18 apply for a permit, correct?

19 A. Correct.

20 Q. All right. Now, the first portion of this
21 condition states -- is a conditional requirement
22 for permitting, isn't that accurate? It begins
23 with the word "if," doesn't it?

24 A. Correct.

25 Q. And it says, "If an existing emission source

1 was subject to permitting requirements of 6NYCRR
2 Part 201 at the time of construction or
3 modification," correct?

4 A. Correct.

5 Q. So everything that follows in this condition of
6 Tonawanda Coke's Title V permit is premised on that
7 first conditional clause, correct?

8 A. In addition to and the owner-operator failed to
9 apply for the permit.

10 Q. Well, obviously. If they had applied, then
11 this would be a moot point, correct?

12 A. Correct.

13 Q. But, everything else in this condition is
14 dependent on that opening conditional clause,
15 correct?

16 A. Correct.

17 Q. Now, when was the pressure-relief valve in --
18 on the coke oven gas line at the Tonawanda Coke
19 plant constructed?

20 A. I do not know.

21 Q. Did you ever ask the company when it was
22 constructed?

23 A. No.

24 Q. When was the pressure-relief valve on the coke
25 oven gas line at the Tonawanda Coke facility

1 modified?

2 A. I don't know.

3 Q. Did you ever ask Tonawanda Coke when it was
4 modified?

5 A. No.

6 Q. Isn't it true, then, Mr. Sitzman, if you don't
7 know those two basic facts, you can't really apply
8 this condition, can you?

9 A. Yes, I think I can.

10 Q. And how is that?

11 A. As an air pollution control engineer for the
12 New York DEC, any emission source needs to be
13 permitted whether -- unless it's exempt or trivial.

14 Q. Now, you've just restated pretty much what you
15 testified to on direct.

16 A. Correct.

17 Q. What I'm trying to get you to focus on is the
18 specific conditions, the specific terms of this
19 condition. And my question to you is: If you
20 don't know when the pressure-relief valve on that
21 coke oven gas line at the Tonawanda Coke facility
22 was constructed or modified, isn't it true, under
23 the terms of this condition, you're not sure
24 whether at the time it was constructed or modified
25 it was subject to any permitting requirements, are

1 you?

2 A. I believe that if it was an existing emission
3 source that I identified that required permitting
4 and already existing, and the time of construction
5 issue is that we always at DEC required permits for
6 these. So, it was at the time of construction
7 subject to permitting. If it was built prior to
8 our regulations, when we started requiring permits
9 for facilities, it should have gotten a permit then
10 if it was in existence. If it was after we
11 required permits, then certainly it was constructed
12 when it needed a permit.

13 Q. So you just testified about practices that you
14 had for New York State permitting obligations
15 before Title V came into effect, correct?

16 MR. MANGO: Objection, your Honor. He's
17 trying to tell him what he just testified to. We
18 heard the answer.

19 THE COURT: No, I think for effective
20 management under 611(a) I'm going to permit it, and
21 we'll get back to the core issue. So go ahead.

22 Do you remember the question?

23 THE WITNESS: No.

24 BY MR. LINSIN:

25 Q. You just testified about practices that you had

1 in permitting emission sources within the Division
2 of Air Resources before Title V came into effect,
3 correct?

4 A. Correct.

5 Q. All right. The permit that was issued to
6 Tonawanda Coke Corporation in 2002 was a Title V
7 permit, correct?

8 A. Correct.

9 Q. And this is the controlling language for that
10 permit, correct?

11 A. Correct.

12 Q. It doesn't say anywhere in here, well, just
13 follow the practices you used to follow, does it?

14 A. It doesn't say not to either.

15 Q. It says explicitly, "If an existing emission
16 source was subject to permitting requirements under
17 Title VI of the state regulations Part 201 at the
18 time of construction or modification," that's what
19 it says, correct?

20 A. Correct.

21 Q. And isn't it true that without having that
22 information, you can't properly apply this
23 condition to any emission source?

24 MR. MANGO: Objection, your Honor. Asked
25 and answered.

1 THE COURT: Yeah, but I'll permit it.

2 Overruled.

3 THE WITNESS: I believe we always have
4 done it that way. We've always asked for a permit
5 when necessary.

6 BY MR. LINSIN:

7 Q. Isn't it true that it is required, in
8 evaluating the conditions of a permit, to look to
9 the literal terms of the condition that exists in
10 the permit?

11 A. Yes, it is.

12 Q. All right. May we take this down, please. And
13 if I may have Defendant's Exhibit F marked for
14 identification.

15 Ask you to take a look at this document,
16 Mr. Sitzman and, first of all, tell us whether you
17 can identify it.

18 A. Yes. It's a full compliance evaluation
19 checklist form.

20 Q. And dated September 18th, 2002?

21 A. Correct.

22 Q. Who signed this form, sir?

23 A. I did.

24 Q. Did you conduct this full compliance evaluation
25 inspection?

1 A. No, I did not.

2 Q. Do you know who did?

3 A. I would have to review the records.

4 Q. Didn't you testify on direct that you reviewed
5 those records before coming in here to testify?

6 A. Yes.

7 Q. But you don't remember who conducted this
8 inspection.

9 A. Not this particular year. Not off the top of
10 my head, sir.

11 MR. LINSIN: Your Honor, I would move this
12 document -- well, let me -- let me ask a couple
13 more questions.

14 BY MR. LINSIN:

15 Q. Why did you sign this document?

16 A. I was required as part of my duties as Regional
17 Air Pollution Control Engineer.

18 Q. But you had to make some evaluation before
19 signing this document, correct?

20 A. Correct.

21 Q. Okay. And you had to determine that the
22 compliance requirements had been met, correct?

23 A. I had to determine that -- this was my review
24 of -- the staff person responsible for the facility
25 was -- was -- filled out this checklist and sent it

1 to me for review.

2 Q. And based upon your review, you determined it
3 was appropriate in your position as the Regional
4 Air Pollution Control Engineer for Region 9 to sign
5 this, correct?

6 A. I determined that all the requirements had been
7 completed for the year at the --

8 MR. LINSIN: Your Honor, I would move --

9 THE WITNESS: -- facility.

10 MR. LINSIN: I'm sorry. I'm sorry. Did
11 I --

12 THE WITNESS: That's okay.

13 MR. LINSIN: I would move Defendant's
14 Exhibit F into evidence.

15 MR. MANGO: No objection, your Honor.

16 MR. PERSONIUS: No objection, Judge.

17 THE COURT: Okay. Defendant's Exhibit F
18 received. Do you want this published?

19 MR. LINSIN: Yes, please, your Honor.

20 THE COURT: Publish, please.

21 (Defendant's Exhibit F was received into
22 evidence.)

23 BY MR. LINSIN:

24 Q. So this full compliance evaluation -- and if we
25 can, first of all, highlight -- well, enlarge that

1 portion of the exhibit.

2 Well, despite the cutoff on the margin, are you
3 able to read this portion of the form, sir?

4 I'm sorry. Can you read it out loud?

5 A. Oh. Sorry. I might miss a little at the
6 beginning. "A full compliance evaluation" -- "A
7 full compliance evaluation is a comprehensive
8 evaluation of the compliance status of a facility.
9 For purposes of this policy, 'facility' is used in
10 the broadest sense of the term, incorporating all
11 regulated emission units within the facility. It
12 addresses all regulated pollutants at all regulated
13 emission units. Furthermore, it addresses the
14 current compliance status of each emission unit as
15 well as the facility's continuing ability to
16 maintain compliance at each emission unit."

17 Q. Now, it doesn't say in here anywhere that this
18 full compliance review was focused only on the
19 battery at Tonawanda Coke, does it?

20 A. No.

21 Q. And as a matter of fact, that wouldn't satisfy
22 the requirements of a full compliance review,
23 correct?

24 A. Correct.

25 Q. All right. May we have the entire document

1 again. And just so it's a little easier to read,
2 that portion, please.

3 Now, the date of September 18th, 2002, was
4 about four months after Division of Air Resources
5 had issued the Title V permit to Tonawanda Coke,
6 correct?

7 A. Correct.

8 Q. And so this was the first full compliance
9 review of the facility with its new Title V
10 permit --

11 A. Correct.

12 Q. -- correct?

13 And you signed this form because you satisfied
14 yourself that one of the inspectors, whose identity
15 you don't recall at the moment, had conducted an
16 on-site inspection and determined that, as required
17 by the top portion of this form, that all emission
18 units had been inspected and that the facility was
19 in compliance with the permit requirements,
20 correct?

21 A. I think it said all regulated emission units,
22 but yes.

23 Q. All right. And, in fact, at the -- at the very
24 bottom of this form -- I'm sorry -- these last
25 three -- last four, I'm sorry. This portion here.

1 Is there any way to shift this so we can
2 actually get the text on the left-hand border? No?
3 All right. Let's go back to the -- just the full
4 document then.

5 The determination on this form is that a
6 current on-site inspection or visit was completed,
7 correct?

8 A. Correct.

9 Q. And that the full compliance evaluation was
10 completed, right?

11 A. Correct.

12 Q. And that the facility was currently in
13 compliance with its permit requirements?

14 A. Correct.

15 Q. And that it had been continuously in compliance
16 during the evaluation period, correct?

17 A. Correct.

18 Q. May I have Defendant's Exhibit III for
19 identification, please?

20 Ask you to take a look at the enlarged portion
21 of this, tell us whether you can identify it.

22 A. This is an inspection detail report from our
23 AFS computer system for an inspection completed by
24 Gary Foersch on March 12th, 2003.

25 Q. And is there a second page to this exhibit,

1 please? Is that it? Okay.

2 Does the -- does the computer entry indicate
3 that at the time of that inspection the facility
4 was in compliance?

5 A. Yes.

6 Q. May I have Defendant's Exhibit G. Oh, I'm
7 sorry. We now found page 2. I'm sorry, your
8 Honor. I apologize, Mr. Sitzman.

9 Going back for just a moment then to
10 Defendant's Exhibit III, and let's go to page 2,
11 please, and enlarge that portion of the text.

12 THE COURT: Can you block out more towards
13 the end of the page?

14 MR. LINSIN: Okay. Thank you.

15 THE COURT: Do you want this published or
16 received?

17 MR. LINSIN: I would move Defendant's
18 Exhibit III into evidence, yes.

19 MR. MANGO: Well, your Honor, I don't
20 think there's the foundation here. The only
21 inspector listed, there's one, and it's not this
22 witness. It's similar to that other form we looked
23 at that was not admitted.

24 THE COURT: Okay.

25 MR. LINSIN: Let me ask a couple more

1 questions in that regard.

2 THE COURT: Certainly.

3 BY MR. LINSIN:

4 Q. In March of 2003, Mr. Sitzman, what was your
5 position?

6 A. I was the Regional Air Pollution Control
7 Engineer.

8 Q. At that time did you supervise Gary Foersch?

9 A. Not directly.

10 Q. Who did?

11 A. Cheryl Webster.

12 Q. And did you supervise Cheryl Webster?

13 A. Yes, I did.

14 Q. In March 2003 did you understand that a Title V
15 permit had just been issued to the title -- to the
16 Tonawanda Coke facility within the last year?

17 A. Yes.

18 Q. Was it your practice as the Regional Air
19 Pollution Control Engineer to monitor the
20 compliance reviews for the facilities that had
21 Title V permits?

22 A. It was my practice to do and my requirement to
23 do the FCE check sheets every year.

24 Q. And in order to do that, were you -- was it
25 part of your responsibility to monitor the results

1 of the periodic on-site inspections and review?

2 A. I would go into the computer system and make
3 sure every do item for that facility was complete
4 and that there were no outstanding compliance
5 issues.

6 MR. LINSIN: Your Honor, on that basis I
7 move Defendant's III into evidence.

8 MR. MANGO: Your Honor, again we'd object
9 on the foundation. There's no relation to this
10 document that -- that this witness has reviewed
11 this document and knows what this document is. He
12 wasn't here. This is a different inspector, and
13 it's basically an accounting of what this other
14 inspector did.

15 THE COURT: Well, if it's an issue of does
16 he know what it is and did he review it, you'll ask
17 those questions.

18 MR. LINSIN: Your Honor, as I recall, the
19 witness just testified that these were the types of
20 entries that he would, in fact, periodically review
21 in order to execute the full compliance evaluation
22 checklist.

23 THE COURT: He did, as a matter of, I
24 guess, habit and practice, and that puts us in
25 another position.

1 But specifically with respect to this document,
2 are you familiar with it as part of your review
3 that was conducted back in -- what -- 2003?

4 THE WITNESS: In 2003 if I was doing an
5 FCE evaluation check sheet, reviewing that, I would
6 have looked in the system to see that an inspection
7 had been done and is completed.

8 BY MR. LINSIN:

9 Q. Let's do it this way, if we may. May I please
10 have Defendant's Exhibit G, marked for
11 identification.

12 Now, do you recognize this document, sir?

13 A. Yes.

14 Q. And is it a full compliance evaluation
15 checklist that you signed?

16 A. Yes, it is.

17 Q. Did you sign it on April 7th, 2003?

18 A. Yes.

19 Q. And before signing this document, would you
20 have reviewed the computer entries regarding the
21 on-site inspections at the Tonawanda Coke facility
22 for the preceding year?

23 A. I would have looked to make sure an inspection
24 was completed, what the compliance status was, yes.

25 Q. And therefore, if there had been a -- an

1 inspection at that facility on March the
2 12th, 2003, less than a month before you signed
3 this document, you would have reviewed that
4 document as well, correct?

5 A. I would have reviewed that the entry existed,
6 correct.

7 MR. LINSIN: Your Honor, at this time I
8 would move both Defendants' Exhibit III and
9 Defendants' Exhibit G into evidence.

10 THE COURT: Okay. Let's see III again,
11 please.

12 MR. LINSIN: Can we enlarge the top half
13 starting further to the left?

14 THE COURT: What is that, Mr. Sitzman?

15 THE WITNESS: This is a printout of the
16 inspection detail of an inspection done
17 March 12th, 2003, at Tonawanda Coke --

18 THE COURT: Okay.

19 THE WITNESS: -- from our computer system.

20 THE COURT: From your computer system.
21 That's the document you would have reviewed in
22 connection with the checklist?

23 THE WITNESS: I would have pulled up this
24 sheet just like this and saw that that inspection
25 was completed. I check the compliance status and I

1 look that the check box for the inspection was
2 complete.

3 THE COURT: Mr. Mango?

4 MR. MANGO: No objection, your Honor.

5 THE COURT: Okay. Then III and G both
6 received. I think, Mr. Personius, that's right.
7 No objection?

8 MR. PERSONIUS: Thank you, Judge, for
9 asking. No objection.

10 THE COURT: Okay. Both received, and then
11 if you want either one published, we can do that.

12 (Defendants' Exhibits III and G were
13 received into evidence.)

14 MR. LINSIN: Yes. If we can do that
15 sequentially, please. If we can first publish the
16 first page, which is on now on the screen, of
17 Defendants' Exhibit III.

18 BY MR. LINSIN:

19 Q. And just to orient the jurors, and Mr. Sitzman,
20 let's start at the top of this, the DEC ID number,
21 what is that for?

22 A. That's the identification number for the
23 facility.

24 Q. All right. And so each permitted facility has
25 a unique identification number?

1 A. Unique, yes.

2 Q. And this is Tonawanda Coke Corporation's ID
3 number, correct?

4 A. Correct.

5 Q. And then you have a couple of boxes. The
6 scheduled date, what does that relate to?

7 A. The Title V facilities were scheduled for when
8 they had to be completed.

9 Q. When the annual inspections had to be
10 completed, correct?

11 A. Correct.

12 Q. All right. And so the deadline for completing
13 the annual inspection at Tonawanda Coke was
14 March 31st, but the inspection was actually
15 achieved on March 12th, correct?

16 A. Correct.

17 Q. And then the time is indicated, 9:30 a.m., and
18 the check is that -- in the far right-hand box is
19 that that inspection was completed, correct?

20 A. Correct.

21 Q. And Mr. Foersch indicated that it was a routine
22 inspection, correct?

23 A. Correct.

24 Q. And what does the -- on that same line right
25 here, what does the AIRS relate to?

1 A. All of our inspections, other compliance
2 status, a bunch of our information on permits has
3 to be submitted to the EPA Air System, and this is
4 a code -- and all our inspections are part of that,
5 and this is a code for a routine inspection. And
6 that -- the information about this inspection when
7 it was conducted would be submitted to EPA.

8 Q. All right. So it's -- it's a method whereby
9 the results of these inspections are submitted to
10 EPA, is that correct?

11 A. Correct.

12 Q. Because the inspection and permitting program
13 that you've testified about -- I'm sorry -- the
14 inspection -- the permitting and inspection program
15 you're talking about is a program that both the
16 Department of Environmental Conservation and EPA
17 work with in order to ensure compliance with the
18 Clean Air Act, correct?

19 A. Correct.

20 Q. And there is one Clean Air Act, correct?

21 A. Correct.

22 Q. Now, there is a comment section down below.
23 Does it indicate with whom Mr. Foersch conducted
24 this inspection?

25 A. Yes.

1 Q. And who was that?

2 A. Mark Kamholz.

3 Q. And references the issuance of this facility's
4 Title V permit just under a year prior, correct?

5 A. Correct.

6 Q. And then at least on this page, the visible
7 portion of the form, a copy of which is kept by
8 Mark, and then if we can move to page 2, please.
9 And this is -- the first two lines are actually a
10 repetition of the fragment that we saw on the first
11 page, correct?

12 A. Correct.

13 Q. So a copy of which -- on the second line of
14 this comment, a copy of which is kept by Mark
15 Kamholz, correct?

16 A. Correct.

17 Q. All right. And this form indicates that
18 Mr. Foersch and Mark -- now, Mr. Foersch is
19 referring to Mr. Kamholz in -- by his first name
20 correct?

21 A. Correct.

22 Q. As a matter of fact, based on your contact and
23 your engagement with this company over the years,
24 you yourself referred to Mr. Kamholz by his first
25 name, correct?

1 A. Correct.

2 Q. That "Mark and I went over the monitoring and
3 reporting requirements in this new permit on an
4 item-by-item basis," correct?

5 A. Correct.

6 Q. "He explained and showed me how compliance is
7 maintained and verified. Everything appeared to be
8 okay," correct?

9 A. Correct.

10 Q. And then he had emission statements for the
11 past five years. And then there's a discussion of
12 the third-party Method 303 inspections, correct?

13 A. Correct.

14 Q. And they -- as per your earlier request, the
15 results of those inspections were being provided to
16 your office on a monthly basis, correct?

17 A. Correct.

18 Q. And so the records for those 303 inspections --
19 and these are daily air emission inspections for
20 the most critical part of this coke plant, the
21 battery -- showed compliance over the past year,
22 correct?

23 A. Correct.

24 Q. And then Mr. Foersch verified this by doing a
25 walk-around himself and observing push, or at least

1 one push, correct?

2 A. Correct.

3 Q. And everything to him looked good, right?

4 A. Yes.

5 Q. And then an assessment of the opacity from
6 the -- for the emissions from the waste heat stack,
7 right?

8 A. Correct.

9 Q. And it was below 10 percent, is that right?

10 A. Correct.

11 Q. Then a reference to certain operating
12 procedures manuals that Mr. Foersch was shown to
13 ensure the ovens were being operated in compliance
14 with the permit, right?

15 A. Correct.

16 Q. And then the conclusion by Mr. Foersch is that
17 this facility appeared to be in compliance with all
18 items listed in their Title V permit, right?

19 A. Right.

20 Q. And it's based on this information that you
21 determined you would sign -- and now if we move to
22 Defendants' Exhibit G, which I believe has already
23 been admitted into evidence -- you determined --
24 and may this be published, please? You determined
25 you would sign the following month this full

1 compliance evaluation checklist, right?

2 A. I would have probably not read the inspection
3 detail. I would have just, as I indicated earlier,
4 looked at the inspection was done, the compliance
5 status, and that the inspection was completed.

6 Q. And you relied on the experience and training
7 and judgment of Gary Foersch in order to make the
8 determination that you would sign this document,
9 correct?

10 A. Correct.

11 Q. Because you knew him to be a long-time
12 inspector with the Division of Air Resources,
13 correct?

14 A. Correct.

15 Q. Someone in whose judgment you had confidence,
16 correct?

17 A. Correct.

18 Q. May we have Defendants' Exhibit HH, please, for
19 identification. Actually, I apologize. Let's do
20 this. Given what has -- may we have Government's
21 Exhibit 3571.36 for identification? Can we enlarge
22 the top half of this? I'm sorry.

23 Do you recognize this document, sir?

24 A. It's another printout of an inspection detail
25 report.

1 Q. And the inspector listed is Cheryl Webster,
2 correct?

3 A. Correct.

4 Q. Would you have supervised her -- her
5 performance of this inspection?

6 A. Depending on what you mean by supervision, yes.

7 Q. Well, what do you mean by supervision?

8 A. I would have made sure the tasks were
9 completed.

10 Q. Did you speak with Miss Webster before she went
11 out to the facility in September of 2004?

12 A. Maybe, maybe not.

13 Q. Did you participate in the on-site inspection
14 with Miss Webster on September 30, 2004?

15 A. Not according to this.

16 Q. Do you have a recollection of participating?

17 A. I don't recollect that I did.

18 Q. Did you speak with her afterward about the
19 results of that inspection?

20 A. Not necessarily, unless she had an issue and
21 came to see me about it.

22 Q. All right. If we can pull this down, please.

23 Do you recall that in May of 2006 EPA -- I'm
24 sorry -- that DEC conducted a visible emission
25 study of the heat stack at the Tonawanda Coke

1 facility?

2 A. Yes, I believe it was May.

3 Q. And may I have Defendants' Exhibit S for
4 identification. S as in Sam.

5 Now, do you recognize what has been marked for
6 identification as Defendants' Exhibit S?

7 A. It's another printout of an inspection detail
8 entry.

9 Q. Now, your name does not appear on this
10 printout, but you have a recollection of
11 participating, is that correct?

12 A. I have a recollection of this happening.

13 Q. All right. And is that the -- what is a Method
14 9 -- we can pull this down. What is a Method 9
15 inspection?

16 A. Method 9 is -- when I spoke earlier about being
17 certified for opacity reading, Method 9 is the
18 entire method you use when you read the smoke from
19 the stack to determine compliance. It's an EPA
20 reference method.

21 Q. And do you recall what the results of that test
22 were?

23 A. They showed violations.

24 Q. All right. And what was done in -- based upon
25 those findings?

1 A. We issued a notice of violation and
2 subsequently a consent order.

3 Q. All right. And do you recall what steps the
4 company did to remedy that violation that was
5 detected?

6 A. I don't recall right now.

7 Q. Do you recall in 2007 that the company spoke --
8 that you spoke, actually, with Mark Kamholz about
9 plans the company had to actually raise the height
10 of their waste heat stack in order to increase the
11 draft?

12 A. Yes, I do remember that part.

13 Q. And was that -- as best you recall, was that
14 part of the company's reaction to this notice of
15 violation you just testified about?

16 A. It probably was.

17 Q. May I have Defendants' Exhibit H for
18 identification, please.

19 Now, with reference to this document, sir, do
20 you recognize what it is?

21 A. Another inspection detail report for an
22 inspection conducted September 15th, 2006.

23 Q. All right. And do you recall whether or not
24 you were present for that inspection?

25 A. Doesn't look like I was.

1 Q. Gary Foersch conducted it, correct?

2 A. That's what it says, yes.

3 Q. May I have Defendants' Exhibit -- I'm sorry --
4 Government's Exhibit 3571.39, for identification.

5 Do you recognize this document, sir?

6 A. Another inspection detail printout for an
7 inspection conducted September 29th, 2006, by
8 Cheryl Webster.

9 Q. And the determination is that the facility is
10 in compliance, correct?

11 A. Correct.

12 Q. May I have, please, Defendants' Exhibit I,
13 marked for identification.

14 Do you recognize this document, sir?

15 A. Yes. Another inspection detail printout
16 indicating an August 23rd, 2007, inspection with
17 Gary Foersch, myself, and Cheryl Webster.

18 MR. LINSIN: Your Honor, at this time I
19 would move Defendants' Exhibit I into evidence.

20 MR. MANGO: No objection, your Honor.

21 THE COURT: Just I?

22 MR. LINSIN: Just I.

23 THE COURT: All right. Mr. Personius, no
24 objection?

25 MR. PERSONIUS: No objection, Judge.

1 THE COURT: Okay. Then Defendants'

2 Exhibit I received, no objection.

3 (Defendants' Exhibit I was received into

4 evidence.)

5 MR. LINSIN: And may it be published, your

6 Honor?

7 THE COURT: Yes. Please.

8 MR. LINSIN: Now --

9 MR. MANGO: Your Honor, so this is clear,

10 our copy is two pages.

11 MR. LINSIN: We will get there.

12 THE COURT: Is that what we are talking

13 about, two pages?

14 MR. LINSIN: Yes. I can only -- I am only

15 able to display one page at a time.

16 BY MR. LINSIN:

17 Q. Does this reflect an inspection at the

18 Tonawanda Coke facility on August the 23rd, 2007?

19 A. Yes.

20 Q. And you testified, I believe, that it was

21 Mr. Foersch and yourself and Miss Webster who

22 conducted the inspection, correct?

23 A. Correct.

24 Q. And the results of this inspection in which you

25 personally participated, again at the top portion

1 of the form indicate that the facility was in
2 compliance, correct?

3 A. I would like to see the second part of this,
4 please.

5 Q. We will go there in a second. But is that what
6 this form says, "in compliance"?

7 A. It says "in compliance," yes.

8 Q. All right. May we go to page 2, please. And
9 enlarge -- yes. Thank you.

10 Now, take a moment if you need it, sir, and
11 just read through this, familiarize yourself.

12 A. Okay.

13 Q. All right. Is it accurate or fair to say that
14 you and Miss Webster and Mr. Foersch went to the
15 Tonawanda facility -- Tonawanda Coke facility on
16 this date to talk about potential issues regarding
17 benzene emissions?

18 A. Yes.

19 Q. And that the -- your department had been
20 conducting some air monitoring and wanted to
21 evaluate potential sources or methods for reducing
22 benzene emission from the plant, correct?

23 A. Yeah, that probably came up. I mean, this was
24 when the study first kicked off, so we were just
25 visiting all the -- all the facilities at the time,

2003

1 to tell them what was going on.

2 Q. Well, this -- the first paragraph of this
3 comment says, "We discussed the ongoing Tonawanda
4 benzene study being conducted by the department via
5 continuous air sampling in the Tonawanda area,"
6 correct?

7 A. Correct.

8 Q. So it didn't just come up. I mean, it's one of
9 the things you discussed, right?

10 A. I didn't mean by -- I didn't mean by come up.
11 I mean, we had just started doing this study, so we
12 were informing the facilities in the area of what
13 and why we were doing it.

14 Q. And you also then at this visit talked about
15 plans that the company had or was willing to
16 perform in order to reduce visible emissions from
17 the plant, correct?

18 A. Yes.

19 Q. All right. One of those, as referenced in the
20 second paragraph, is the decision to raise the
21 height of the waste heat stack, correct?

22 A. Correct.

23 Q. And then they also talked about evaluating
24 adding potential additional water sprays to the
25 pushing side of the battery, which might also help

1 with particulate emission, correct?

2 A. It might, yes.

3 Q. Well, that's one of the things they talked
4 about, right?

5 A. They were studying it, yes. They talked about
6 they were studying it.

7 Q. And then you and your colleagues toured the
8 facility, correct?

9 A. Correct.

10 Q. And then there is a listing here of the battery
11 top, the boiler house, and then the light oil
12 processing area, correct?

13 A. Correct.

14 Q. And the light oil processing unit is in the
15 by-products area, right?

16 A. Correct.

17 Q. And do you recall what was discussed about the
18 light oil processing unit during this visit?

19 A. No, I do not.

20 Q. It's accurate, though, that based on your
21 inspection you determined that the battery top
22 components were in good working order, and no
23 visible emissions were noted, correct?

24 A. Correct.

25 Q. All right. May I have, please, Defendants'

2005

1 Exhibit NNN, as in Nellie, for identification.

2 Now, did you, Mr. Sitzman, along with
3 Mr. Carlacci, Miss Webster, and Mr. Foersch visit
4 the Tonawanda Coke plant on May the 28th, 2008?

5 A. Yes.

6 Q. What was the -- if -- we'll come back to these.
7 I'm sorry. I should have waited to pull these up.

8 What was the purpose of that visit?

9 A. At that point we were really looking at
10 facilities in the area to try to reduce benzene
11 emissions.

12 Q. All right. And do you recall in that meeting
13 talking about the -- some of the results of this
14 ongoing benzene study, correct?

15 A. Correct.

16 Q. And do you recall talking with the facility
17 about its light oil system and what modifications
18 they might be able to make to the loading
19 procedures for the trucks from that light oil
20 system?

21 A. Yes.

22 Q. And what were those?

23 A. It was to install a system to put a vapor
24 balance system on the truck loading so any vapors
25 created during loading of the truck would be

1 recovered back in the facility.

2 Q. And do you recall that in response Mr. Kamholz
3 said that he thought that there was technology
4 available to do that and they thought it would be
5 doable and they would work to make that happen?

6 A. Yes.

7 Q. How long were you in the by-products area that
8 day?

9 A. I don't exactly remember. Half an hour maybe.
10 Maybe an hour.

11 Q. Just what you recall. I'm not -- if I ask a
12 question you don't know the answer to, please, just
13 tell me you don't recall.

14 A. I don't recall.

15 Q. All right.

16 THE COURT: All right. This is May
17 of 2008?

18 MR. LINSIN: That is correct, your Honor.

19 BY MR. LINSIN:

20 Q. Is that when this meeting occurred, May the
21 28th, 2008?

22 A. Yes.

23 Q. All right. And just so the -- the notes -- I'm
24 sorry -- the documents you've been reviewing, are
25 those your notes from that inspection?

2007

1 A. No.

2 Q. Do you recognize whose they are?

3 A. Looks like Cheryl Webster's handwriting.

4 Q. All right. We'll take this down, please.

5 THE COURT: Is there only one page to that
6 exhibit?

7 MR. LINSIN: No, your Honor. There are
8 actually three separate pages to that exhibit.

9 THE COURT: Thank you.

10 BY MR. LINSIN:

11 Q. Now, you testified on direct about an
12 inspection in which you participated in August -- I
13 believe it was August 21st of 2008, where you --
14 you had a conversation with Mark Kamholz about the
15 battery flare stack, correct?

16 A. Correct.

17 Q. And you determined then that that flare did not
18 have an operable pilot, right?

19 A. Right.

20 Q. And if I recall your testimony correctly, you
21 at that point told Mark and the company that they
22 needed to have a pilot, correct?

23 A. Correct.

24 Q. And later on you issued a notice of violation
25 because they didn't have a pilot, correct?

2008

1 A. Correct.

2 Q. And requiring them to make that change and get
3 the pilot operable again, correct?

4 A. Correct.

5 Q. Now, in September of 2008 do you recall making
6 a request to the Tonawanda Coke facility to make
7 arrangements for you to come and visit the facility
8 at night?

9 A. Yes.

10 Q. And why did you make that request?

11 A. At the time we were receiving complaints or --
12 and information from the community group involved
13 in Tonawanda, and one of their allegations was that
14 things were happening different at night, that a
15 different kind of coke was being produced and the
16 operation was somehow changing at night. So I
17 wanted to go and see what happened at night, so I
18 scheduled going there.

19 Q. All right. And in response to your request
20 that the company arrange a nighttime visit for you,
21 did they cooperate?

22 A. Yes.

23 Q. All right. Did they make arrangements for
24 staff, including Mr. Kamholz, to be on-site to
25 accompany you in your visit?

2009

1 A. Yes.

2 Q. And did that visit occur actually on
3 September 23rd, 2008?

4 A. I believe that's the date.

5 Q. May I please have Government's Exhibit 3560.45
6 for identification?

7 Now, is it -- excuse me. Is it possible to try
8 and enlarge this again, but starting further to the
9 left of the margin, all the way to the edge of the
10 paper, that would be perfect. Thanks.

11 Okay. Do you recognize what this -- this
12 document is, sir?

13 A. Yes.

14 Q. What is it?

15 A. It's another inspection detail report of an
16 inspection I completed September 23rd, 2008.

17 Q. And does it relate to this nighttime inspection
18 you were just testifying about?

19 A. Yes, it does.

20 MR. LINSIN: Your Honor, I move
21 Government's Exhibit 3560.45 into evidence.

22 MR. MANGO: No objection, your Honor.

23 MR. PERSONIUS: No objection, your Honor.

24 THE COURT: Okay. 3560.45 received into
25 evidence. No objection.

1 (Government's Exhibit 3560.45 was received
2 into evidence.)

3 THE COURT: You want it published?

4 MR. LINSIN: Yes, please, your Honor.

5 THE COURT: Okay.

6 BY MR. LINSIN:

7 Q. So did you conduct this inspection yourself?
8 Were any colleagues with you?

9 A. I conducted it myself.

10 Q. All right. And this indicates you arrived at
11 the facility at about 11:00 p.m. on the night of
12 September 23rd, 2008, correct?

13 A. Correct.

14 Q. And here again the compliance status indicated
15 on this page -- and we'll get to the comment
16 section, but the compliance status that is entered
17 here is in compliance, correct?

18 A. Correct.

19 Q. If we can then go to the second page of the
20 exhibit, which should contain the entire comment
21 frame. And would you just read this out loud to
22 the members of the jury, please?

23 A. "I went to Tonawanda Coke at night to view
24 pushing emissions from the pushing of furnace coke
25 ovens, which is only done at night. I witnessed

2011

1 two foundry coke oven pushes and four furnace coke
2 pushes. Emissions looked the same from all pushes.
3 I also inspected battery top operations. All
4 operations were in compliance at the time of my
5 inspection. I could not, however, read opacity
6 from the pushing operation due to my inspection
7 being at night. I left the facility at 2:00 a.m."

8 Q. All right. So you were there that night and
9 early morning for a total of three hours, correct?

10 A. Yes.

11 Q. And did you learn at that night -- during that
12 night why it was that the Tonawanda Coke facility
13 frequently pushes furnace coke production at
14 nighttime?

15 A. They explained to me that they -- furnace coke
16 gets taken out in train cars, so it --
17 operationally it's easier to load the train cars at
18 night, because during the day truckers are coming
19 in with coke and getting loaded in their trucks,
20 and the facility is full of trucks.

21 Q. And it's a little more difficult to arrange for
22 truckers to drive at night, correct?

23 A. To come in at night.

24 Q. All right. Now, you were asked some
25 questions -- if we can take this down, please.

2012

1 You were asked some questions earlier about
2 whether DEC's inspections of the Tonawanda Coke
3 facility focused on the battery operations. Do you
4 recall those questions?

5 A. Yes.

6 Q. And you tied this initially in your testimony,
7 as I recall, to the fact that there had been this
8 request for a -- an exemption for pushing controls,
9 correct?

10 A. Correct.

11 Q. But the fact is -- and you then testified later
12 in your direct testimony that most federal and
13 state regulations for coke oven batteries relate to
14 the operation of the battery, correct?

15 A. Correct.

16 Q. And that is true because the battery is
17 understood to be the primary source of potential
18 emissions that are of interest to federal and state
19 regulators, right?

20 A. Correct.

21 Q. But when DEC inspectors go out to conduct a
22 full compliance inspection of the facility, they
23 cannot just be limited to the battery, correct?

24 A. Correct.

25 Q. They have to evaluate and inspect all of the

2013

1 emission units, as that form that you've testified
2 about requires, correct?

3 A. The form requires that an inspection be done.

4 Q. Regarding the compliance of all the emissions
5 units at the facility, correct?

6 A. The compliance is determined by other
7 information than just the inspection.

8 Q. But compliance -- for the purposes of a full
9 compliance evaluation review, compliance requires a
10 determination that all the emission units at the
11 facility be in compliance, right?

12 A. Yes.

13 Q. And if one of the emissions units was
14 determined not to be in compliance, then there
15 would be some notation of that in an inspection
16 report, correct?

17 A. If it was -- if it was assessed during the
18 inspection, yes.

19 Q. Now, let me go back to a point that you
20 testified about on direct regarding the -- this
21 facility's permit, the Title V permit. You
22 testified that this facility -- that the Tonawanda
23 Coke facility was required to have a Title 5 permit
24 because it had been determined that it was a -- I
25 believe you used the term "major facility." Is

2014

1 that correct?

2 A. Yes.

3 Q. And the term under the Clean Air Act it is a --
4 it is a major source, correct?

5 A. Correct.

6 Q. And isn't it true that the Tonawanda Coke
7 facility was determined to be a major source
8 facility because of the emissions from the plant's
9 waste heat stack?

10 A. And the boilers, yes.

11 Q. And those emissions are emissions of SOx,
12 sulfur dioxide, correct?

13 A. Yeah.

14 Q. And NOx, correct?

15 A. Correct.

16 Q. Nitrogen oxide, correct?

17 A. Correct.

18 Q. And it was the determination of the quantity of
19 the emission of those components that classified
20 this facility as a major source under the Clean Air
21 Act, correct?

22 A. Correct.

23 Q. All right. Now, you also testified, as I
24 recall, about the -- some of the terms that are
25 used under the New York State regulations

1 concerning sources and points, correct?

2 A. Correct.

3 Q. Now, those two terms have separate and
4 different definitions under the New York State
5 regulations, don't they?

6 A. Yes.

7 Q. And the definition for a source doesn't tell
8 you to look to the definition of a point, does it?

9 A. No.

10 Q. And the definition of an emission point doesn't
11 say, see definition for emission source, correct?

12 A. Correct.

13 Q. They are different under the regulations,
14 right?

15 A. They're different definitions, yes.

16 Q. And they are regulated differently, correct?

17 A. Possibly.

18 Q. They are required to be identified separately
19 in the Title V application, correct?

20 A. Correct.

21 Q. They're given different identification numbers,
22 correct?

23 A. Correct.

24 Q. And that is based upon the different
25 definitions that are contained in the regulations,

1 correct?

2 A. Correct.

3 THE COURT: Okay. Let's take 15.

4 MR. LINSIN: All right.

5 THE COURT: Are you -- does that work, or
6 are you just about done?

7 MR. LINSIN: That's perfectly fine, Judge,
8 thank you. No.

9 THE COURT: You've got a little bit of
10 time?

11 MR. LINSIN: Yes.

12 THE COURT: Okay. Everybody doing okay?
13 Okay. Does anybody not want a break?

14 MR. PERSONIUS: Judge, I'd be just as
15 happy to go on.

16 THE COURT: All right. We'll see you in
17 about 15 minutes.

18 (Jury excused from the courtroom.)

19 THE COURT: Okay. Mr. Sitzman, you can
20 take a break. Thanks. Okay. We'll see you at
21 4:00 o'clock.

22 MR. MANGO: Thank you.

23 MR. PERSONIUS: Thank you, Judge.

24 (Short recess was taken.)

25 (Jury seated.)

2017

1 THE COURT: Welcome back. Please have a
2 seat.

3 Okay. Mr. Larry Sitzman is back on the stand.
4 The attorneys and parties are back present. We are
5 going to resume cross-examination. Mr. Sitzman is
6 still under oath.

7 Just in case you were wondering, okay,
8 Mr. Linsin was not hallucinating when he was trying
9 to get his monitor screen adjusted that so the full
10 exhibit would show. Some of our monitors are
11 tracking differently today. I don't know what it
12 is. Particles or something in the air. I'm not
13 exactly sure. But we're trying to straighten that
14 all out. So I think we have most of it under
15 control or at least we know some of it's not quite
16 right. So if you would just bear with us when we
17 try to adjust the exhibits, that would be helpful.

18 I think with that, Mr. Linsin, if you'd like to
19 start -- or resume cross-examination, please.

20 MR. LINSIN: Thank you, your Honor.

21 BY MR. LINSIN:

22 Q. Okay. Now, may I please have Government
23 Exhibit 131 in evidence?

24 Now, Mr. Sitzman, you testified about this
25 exhibit on direct examination.

1 And could we see the second page of this
2 exhibit, please. And now back to the first page.

3 This is the cover letter that transmitted that
4 HAPS emission study to the Department of
5 Environmental Conservation on July 11th of 2003,
6 correct?

7 A. Correct.

8 Q. And this was addressed directly to you,
9 correct?

10 A. Yes.

11 Q. And at that point you were the Regional Air
12 Pollution Control Engineer for Region 9, correct?

13 A. Correct.

14 Q. And you knew the study was done with regard to
15 new federal regulations regarding the monitoring
16 and regulation of hazardous air pollutants,
17 correct?

18 A. Correct.

19 Q. Now, if we can go to -- I believe it's document
20 page 4-2. And just enlarge this portion. All
21 right.

22 Now, this table was contained in the emission
23 study that was submitted by Tonawanda Coke,
24 correct?

25 A. Correct.

1 Q. And if we could please highlight the coke oven
2 gas system, colorize it, please.

3 No, I'm sorry. All the way across.

4 Now, I believe you testified on the -- on
5 direct examination that this table didn't factor
6 into your calculations because the emissions were
7 determined to be minor. Is that what I recall your
8 testimony to be?

9 A. They would be -- you know, they're -- the
10 emission numbers are part of the total calculation,
11 but they are minor for that facility, the total.

12 Q. In order -- I'm sorry. Were you not finished?

13 A. Go ahead.

14 Q. In order for you to have determined that the
15 emissions reported in here for the coke oven gas
16 system were minor, you needed to look at this
17 section, didn't you?

18 A. Correct.

19 Q. So, you looked at this section; you determined
20 that because the reporting here for total organic
21 compound emissions from the coke oven gas system
22 were minor, that it wasn't going to factor into
23 your overall analysis of the conclusions of this
24 air emission study, is that correct?

25 A. Correct.

2020

1 MR. MANGO: Your Honor, I'm going to
2 object. I believe on direct his answer was he does
3 not remember seeing this section, and so there's a
4 mischaracterization in that question.

5 THE COURT: Okay. The jury heard the
6 evidence. I mean, the answer was given to the
7 question. I think we can move on. Thank you.

8 MR. LINSIN: All right. Thank you.

9 BY MR. LINSIN:

10 Q. Well, let me make sure. The question I asked
11 you, sir, was: In order to determine that the
12 emissions reported in this study from the coke oven
13 gas system were minor, you had to look at this
14 section, didn't you?

15 A. Someone had to, yes.

16 Q. So someone had to see that a pressure-relief
17 valve is reported in this emission study that was
18 submitted to DEC in 2003, correct?

19 MR. MANGO: Objection, your Honor. That
20 calls for speculation.

21 THE COURT: Can you answer that question?

22 THE WITNESS: Not directly.

23 THE COURT: Okay. You can reask it, if
24 you'd like, or something close to it.

25

1 BY MR. LINSIN:

2 Q. All right. Let me go back to the premise
3 question then. In order for the -- I thought I
4 heard you testify on direct that you had not --
5 that this table didn't factor into your
6 calculations -- your calculations -- about the
7 overall results of this emission study, because the
8 reported emissions were minor. Did I mishear you?

9 A. I believe at the time we were talking the next
10 page from this, where it actually said zeros for
11 emissions --

12 Q. Well --

13 A. -- of benzene, toluene, and xylene.

14 Q. This page also reports emissions, doesn't it?

15 A. Yes.

16 Q. All right. And as a matter of fact, reports
17 leak emissions based on the indication in
18 footnote two, correct?

19 A. Correct.

20 Q. And that was the purpose of this study,
21 correct?

22 A. The emissions reported here are total organic
23 compounds.

24 Q. Right.

25 A. Not hazardous air pollutants.

2022

1 Q. In order, though, for you or your colleagues to
2 determine that the emissions reported were
3 insignificant, somebody had to look at this table
4 and the next table, correct?

5 MR. MANGO: Objection, your Honor. I
6 think it's an appropriate question whether he
7 looked at it. I don't think it's appropriate to
8 ask whether other people looked at it.

9 THE COURT: No, I don't think that's
10 right, because he testified that somebody would
11 have to have looked at one or other or both of
12 these pages, previously. So, on that basis,
13 objection overruled.

14 BY MR. LINSIN:

15 Q. Would you like me to repeat the question?

16 A. Please. Sorry.

17 Q. Let me see if I can try. In order for you or
18 your colleagues to have determined that the
19 reported emissions in this study for the coke oven
20 gas system were minor, somebody had to look at this
21 table and the table on the subsequent page,
22 correct?

23 A. Presumably, yes.

24 Q. And your testimony was that -- if I recall
25 correctly, that this text in here where it says

2023

1 pressure-relief valve on the coke oven gas system
2 one, number of components one, your testimony, if I
3 recall, was that this was not proper notice of an
4 emission source in the by-products department. Is
5 that your testimony?

6 A. I think the question was proper notice for
7 permitting.

8 Q. All right. But there's no doubt, is there,
9 Mr. Sitzman, that in 2003 Tonawanda Coke and Mark
10 Kamholz provided information to the Department of
11 Environmental Conservation that there was a
12 pressure-relief valve on the coke oven gas system
13 at the Tonawanda Coke facility, is there?

14 A. Correct. They've done it other times too.

15 THE COURT: I'm sorry. I didn't hear what
16 you said.

17 THE WITNESS: I said, correct, and they've
18 done it at other times also.

19 BY MR. LINSIN:

20 Q. I'm sorry. They've done what at other times?

21 A. Notified us of the existence of pressure-relief
22 valves.

23 Q. All right. The pressure relief valve I'm
24 asking about now is the pressure-relief valve on
25 the coke oven gas system at the Tonawanda Coke

1 facility. They provided information to DEC in 2003
2 that there was a pressure-relief valve on the coke
3 oven gas system at the facility, didn't they?

4 A. Yes.

5 Q. We can bring this down, please.

6 Now, you participated in the April 2009 joint
7 inspection of the Tonawanda Coke facility, is that
8 correct?

9 A. Yes.

10 Q. Before attending that inspection, did you speak
11 with Gary Foersch?

12 A. I don't remember the exact date when Gary
13 retired, so --

14 Q. Would November 10th, 2009, refresh your
15 recollection?

16 A. It doesn't. I don't know. I don't remember.

17 Q. All right. Well, my question really was not
18 what date Mr. Foersch retired. My question was:
19 Before the April 2009 inspection, did you talk to
20 Gary Foersch about his interaction with this
21 facility?

22 A. I don't remember.

23 Q. You were asked some questions about this
24 requirement in the Title V permit that there be
25 a -- that there be baffles in quench tower number

1 2, the east quench tower, correct?

2 A. Correct.

3 Q. And you were shown a letter, I believe, from
4 1997, where you had requested that a paragraph be
5 included to make that clear in the letter, correct?

6 A. Correct.

7 Q. Now, do you know how many times between the
8 date of that letter in 1997 and the inspection that
9 we're just going to talk about in just a minute in
10 April of 2009 -- how many times DEC inspectors were
11 at the Tonawanda Coke facility?

12 A. At least once per year.

13 Q. Would it surprise you that it was at least 22
14 times between 1997 and 2009?

15 A. No, it wouldn't.

16 Q. And before attending the April 2009 inspection,
17 wouldn't it have been valuable to you to talk to
18 Mr. Foersch about his experiences and activities in
19 inspecting this facility over the years?

20 A. Possibly. May have done it earlier.

21 Q. I'm sorry. You had done what?

22 A. We had talked. I mean, we've talked about the
23 facility. We had talked many times.

24 Q. And before April of 2009, did Mr. Foersch ever
25 tell you that he understood that this quench tower

1 number 2 didn't have baffles in it?

2 A. No.

3 Q. Did he ever tell you that he had made a
4 judgment in his mind that he was simply not going
5 to bring it up and not going to insist that baffles
6 be installed?

7 A. No.

8 Q. Before the April 2009 inspection, DEC retained
9 authority over the Tonawanda Coke plant, correct,
10 for regulatory purposes for Clean Air Act
11 compliance?

12 A. Yes.

13 Q. And there hadn't been any change in that
14 immediate -- in the immediate preceding months, a
15 change in the regulatory authority that DEC had
16 with respect to that facility, had there?

17 A. No.

18 Q. And the decision to conduct a joint
19 investigation did not somehow suspend or terminate
20 DEC's authority, its regulatory authority, with
21 respect to this facility, did it?

22 A. No.

23 Q. Now, you testified on direct examination
24 regarding your notes from this April 2009
25 inspection. When was the last time you reviewed

1 those notes before coming on the stand to testify
2 today?

3 A. Within the last few days.

4 Q. And you had ample time to review them?

5 A. Yes.

6 Q. Do you recall in those notes that under the
7 section relating to activities on April 20th, which
8 would have been a Monday, that you drew a diagram
9 of the pressure-relief valve and included some
10 additional information about the valve?

11 A. Yes.

12 Q. And where did you get the information to draw
13 that diagram of the pressure-relief valve?

14 A. I was standing there looking at it.

15 Q. So you did it just based on your own
16 observations?

17 A. My own observation.

18 Q. So, on the ground?

19 A. On the ground, yes.

20 Q. So this pressure-relief valve was visible to
21 you as you looked up to the coke oven gas line down
22 in the by-products, correct?

23 A. Correct.

24 Q. And I believe your notes had an indication that
25 there was a steam line that went into the vent at

1 one point, is that correct?

2 A. Yes.

3 Q. How did you determine it was a steam line?

4 A. I believe Mr. Kamholz told me that there was a
5 steam tracer on that valve. There's many
6 throughout the facility so things don't freeze up
7 in the wintertime.

8 Q. And your notes at that point also indicate some
9 information about the set point for the valve, is
10 that right?

11 A. I believe that was on the 21st.

12 Q. All right. Now, do you recall in your review
13 of those notes for the 20th, right next to the
14 diagram that you drew, that there is a section of
15 your notes that have been blacked out?

16 A. No, I don't recall.

17 Q. All right. May I please have Government's
18 Exhibit 3560.61 for identification. And let's
19 scroll through the pages, please. All right. Stop
20 here, please.

21 What I'm going to ask you, sir, is first of all
22 to just review the top half of the page yourself.
23 Review as much of the page as you wish, and I have
24 some questions I want to ask.

25 A. Okay.

1 Q. It's just been enlarged, if you were --

2 A. Uh-huh.

3 Q. Now, if we can take that down, please.

4 Having reviewed that document, do you now
5 recall that immediately below the diagram of the
6 pressure-relief valve that there was a -- an area
7 on the page where the text had been blocked out?

8 A. Uh-huh.

9 THE COURT: Yes? Yes?

10 THE WITNESS: Yes, sorry.

11 BY MR. LINSIN:

12 Q. Did you block that out?

13 A. I would think so. I don't recall.

14 Q. What was -- what did the text say before you
15 blocked it out?

16 A. I have no recollection.

17 Q. Is it a common practice for you, sir, to block
18 out investigative notes that you -- you create
19 during the course of a Title V compliance
20 inspection?

21 A. It's common practice for me to cross out things
22 that I started writing wrong, that I might have
23 made a mistake on.

24 Q. What you just observed in your notes wasn't
25 information that was lined through or crossed out,

1 was it?

2 A. No. It was blacked out very well.

3 Q. All right. And you have no present
4 recollection of what was in those notes?

5 A. No, I don't remember what was there.

6 Q. When did you black it out?

7 A. I have no clue. I don't ever remember blacking
8 it out after the inspection.

9 Q. Now, you testified about the closeout meeting
10 on the 21st, correct?

11 A. Correct.

12 Q. And the subject of the pressure-relief valve
13 came up during the closeout meeting, is that
14 correct?

15 A. Correct.

16 Q. But you had also learned some information about
17 the pressure-relief valve on the 20th and then
18 earlier on the 21st, correct?

19 A. Correct.

20 Q. So at the time of the closeout meeting at the
21 Tonawanda Coke Corporation on April 21st, 2009, you
22 knew that there was a pressure-relief valve on the
23 coke oven gas line, correct?

24 A. Correct.

25 Q. And you knew at that time that the light oil

1 system in the by-products department had been shut
2 down, correct?

3 A. Correct.

4 Q. And you knew, or at least based on the
5 information you had been given it was your
6 understanding that this valve on the coke oven gas
7 line released every 20 or 30 minutes, correct?

8 A. Correct.

9 Q. And you knew on April 21st, 2009, that this
10 pressure-relief valve was not in the facility's
11 Title V permit, correct?

12 A. Correct.

13 Q. And you had examined the circular charts that
14 were in the shed immediately beneath the
15 pressure-relief valve in the by-products area, and
16 had observed spikes in the line pressure that were
17 recorded there, correct?

18 A. Correct.

19 Q. And you were given information by Mr. Kamholz
20 or Mr. Cahill that those spikes in pressure were
21 the result of oven reversals, correct?

22 A. Correct.

23 Q. And you understood that the -- the oven
24 reversals or flue reversals at that facility
25 occurred on a regular and routine basis, correct?

1 A. Correct.

2 Q. You knew all of this at the time of this
3 closeout meeting, correct?

4 A. Correct.

5 Q. And at that closeout meeting you asked Mark
6 Kamholz if the facility could figure out a way
7 either to increase or raise the set point for the
8 pressure-relief valve or lower the overall line
9 pressure in the coke oven gas line, correct?

10 A. No. I actually asked him in the morning when
11 we were out in the by-products area.

12 Q. You asked him to what?

13 A. Mark and Pat, I asked them if they could
14 increase the set point of the pressure-relief valve
15 or decrease the system pressure.

16 Q. And at some point later you received
17 information indicating that they had done exactly
18 that, correct?

19 A. Correct.

20 Q. When did you receive that information?

21 A. You know, I think it was a couple days later.

22 Q. All right. Now, at the closeout meeting or at
23 any time during this joint inspection, you did not
24 and no one from any of the agencies represented did
25 not tell this facility that they had to blank off

1 that valve, did you?

2 A. No.

3 Q. You didn't tell them that they had to file an
4 amended -- an amendment to their permit, did you?

5 A. No.

6 Q. After you left the facility, in the next eight
7 months all the way to the end of 2009, the
8 Department of Environmental Conservation did not
9 issue any notice of violation to this facility
10 concerning the pressure relief valve, did you?

11 A. DEC did not.

12 Q. Is it your understanding that EPA issued a
13 notice of violation regarding the pressure-relief
14 valve?

15 A. Yes.

16 Q. And do you recall that having been done
17 in 2010?

18 A. Possible. I don't recall.

19 Q. Do you have any information that DEC or EPA
20 issued a notice of violation to the Tonawanda Coke
21 facility regarding the pressure-relief valve at any
22 point during 2009?

23 A. I don't recall. I'd have to review the file.

24 Q. Which is what you did before you came on the
25 stand to testify.

1 A. Which is what I did, and it's an extensive
2 file.

3 Q. And based upon your review, you don't have any
4 recollection of an NOV being issued for that
5 pressure-relief valve by any agency in 2009, do
6 you?

7 A. I don't recollect it being there or not being
8 there.

9 Q. May I please have Government's Exhibit 3560.13.
10 If we can enlarge the top -- top half from the far
11 left-hand margin, please.

12 Can you identify this document, Mr. Sitzman?

13 A. It's another inspection detail report, entered
14 after the April -- entered on April 21st, the joint
15 inspection with EPA, and says that myself and
16 Cheryl Webster performed the inspection.

17 Q. And this inspection report states in terms of
18 compliance status that the facility is in
19 violation, correct?

20 A. Correct.

21 Q. Now, if we can go to the second page of this
22 document and enlarge the text at the top.

23 You wrote this, sir?

24 A. No.

25 Q. You participated in the inspection, correct?

1 A. Correct.

2 MR. LINSIN: Your Honor, I move
3 Government's Exhibit 3560.13 into evidence.

4 MR. MANGO: No objection, your Honor.

5 MR. PERSONIUS: No objection, your Honor.

6 THE COURT: Okay. 3560.13 is received
7 into evidence, no objection.

8 (Government's Exhibit 3560.13 was received
9 into evidence.)

10 MR. LINSIN: And if -- just for the sake
11 of completeness, if we could go back to the first
12 page, please, and enlarge the text of the top, and
13 if the document may be published to the jury, your
14 Honor.

15 THE COURT: Yes, you may. And is.

16 BY MR. LINSIN:

17 Q. All right. Now, so here again we show an
18 inspection concluding on April 21st, 2009, correct?

19 A. Correct.

20 Q. And the entry is that you were the primary
21 inspector, is that correct?

22 A. Yes.

23 Q. How many days of this inspection did you
24 participate in, Mr. Sitzman?

25 A. At least three.

1 Q. So that would be three out of six days?

2 A. I think three out of seven.

3 Q. What's your understanding as to the date the
4 inspection --

5 A. The inspection started the 14th and concluded
6 the 21st.

7 Q. So that would be 14th, 15th, 16th, 17th of the
8 first week, right?

9 A. Yeah.

10 Q. That's four days, right?

11 A. Oh, there was a weekend in there.

12 Q. Weekend in there, and then we've got two days
13 the next week, right?

14 A. Okay.

15 Q. So six days?

16 A. Six days.

17 Q. And your recollection is that you were there
18 for three days?

19 A. When I reviewed my notes I noted entries on the
20 14th, 20th, and 21st. I know I was there those
21 days. Could I have been there others too and not
22 written any notes? Certainly. But I at least know
23 I was there three.

24 Q. May we have the second page of this document,
25 please?

1 Now, the first paragraph indicates that you and
2 Miss Webster participated in this inspection --
3 well, it says here seven days. We have just
4 determined it was six -- for a full air compliance
5 inspection, correct?

6 A. Correct.

7 Q. And then it says, "EPA has not issued an
8 inspection report and has requested more
9 information via two Section 114 letters." Would
10 you remind the jury what a Section 114 letter is?

11 A. A Section 114 letter is an EPA request for
12 information.

13 Q. All right. And as of April 21st, 2009, had any
14 Section 114 letters been issued to the Tonawanda
15 Coke facility?

16 A. Any previous ones?

17 Q. No. With respect -- as a consequence of this
18 investigation.

19 A. I don't remember when they were issued.

20 Q. Okay. Then there is a reference to source
21 testing being required, correct?

22 A. Correct.

23 Q. And then would you read the concluding second
24 sentence of that first paragraph?

25 A. "EPA is taking the lead on enforcement and will

1 determine the number, nature, and extent of
2 violations."

3 Q. Was that sentence meant to indicate that DEC
4 was surrendering its enforcement authority to EPA?

5 A. Not at all. That could have been written much
6 better.

7 Q. Do you know who wrote this?

8 A. I believe, Cheryl.

9 Q. And then the text goes on to talk about
10 possible violations that were detected during
11 inspection, correct?

12 A. Correct.

13 Q. And I'd like you to look through this summary
14 and tell me and the jury if there is any reference
15 in this second paragraph to the pressure-relief
16 valve that was observed on the coke oven gas line
17 at the facility during the inspection.

18 A. No, there isn't.

19 Q. We can take this down, please.

20 Now, you just testified a moment ago that you
21 drew this diagram in your notes about the
22 pressure-relief valve based on looking up and
23 making an observation as you were standing in the
24 by-products area, correct?

25 A. Correct.

1 Q. May I please have Defendants' Exhibit QQQ for
2 identification -- I'm sorry. In evidence.

3 THE COURT: Miss Henderson, you're
4 searching it out right now?

5 MR. LINSIN: Let's -- are we able to find
6 this, Sheila? All right.

7 THE COURT: We have a straight QQQ or is
8 it QQQ.01?

9 MR. LINSIN: It's QQQ.01, but I think
10 we're having larger problems than that.

11 My apology. My apology.

12 BY MR. LINSIN:

13 Q. All right. Do you recognize this photograph
14 sir?

15 A. Yes, I do.

16 Q. And is this a photograph of the
17 pressure-relief -- I'm sorry -- of the by-products
18 department in the -- at the Tonawanda Coke
19 facility?

20 A. Yes.

21 Q. Or a portion of it anyhow, correct?

22 A. A portion of it.

23 Q. And it's the portion that's immediately next to
24 the roadway that you identified as Broadway, right?

25 A. Correct.

1 Q. And do you see the pressure-relief valve in
2 this photograph?

3 A. Yes, I do.

4 Q. Would you tap the screen and create an arrow
5 where that valve is located?

6 All right. And where were you standing when
7 you drew this diagram of the pressure-relief valve
8 that appears in your notes?

9 A. I don't remember exactly where I was standing.
10 I know previous to that we were over by the
11 exhauster building.

12 Q. All right.

13 A. Which would be up -- up farther.

14 Q. Up farther to the left in the photograph?

15 A. To the --

16 Q. Toward the background?

17 A. Up in that area where the arrow is.

18 Q. All right. So you were previously over by the
19 exhausters, and then you moved over closer to the
20 location of the pressure-relief valve?

21 A. That's how I remember it, yes.

22 Q. All right. Would you agree with me,
23 Mr. Sitzman, that this pressure-relief valve
24 located here on this coke oven gas line at the
25 Tonawanda Coke facility is in an open and obvious

1 location on this coke oven gas line?

2 A. From the perspective of this picture, yes.

3 Q. Now, DEC did issue a notice of violation to the
4 Tonawanda Coke facility in 2009, correct?

5 A. I believe so.

6 Q. And, in fact, a notice of violation was issued
7 on October 28th of 2009 regarding the absence of
8 baffles in quench tower number 2, correct?

9 A. Correct.

10 Q. Now, were you involved in the decision whether
11 or not to issue that notice of violation?

12 A. Yes.

13 Q. And before making the decision to issue that
14 notice of violation, did you speak to Gary Foersch?

15 A. I don't believe so.

16 Q. Wouldn't it have been important to you to know
17 what Mr. Foersch's experience had been regarding
18 the presence or absence of baffles in that quench
19 tower between 2000 -- I'm sorry -- 1997 and 2009?

20 A. No. We found the violation and issued a notice
21 of violation.

22 Q. You understood that Mr. Foersch was the primary
23 inspector for that facility during the period I
24 just mentioned, correct?

25 A. Correct.

1 Q. And yet you didn't feel that it was important
2 to speak to him?

3 A. It was a violation.

4 Q. Cut-and-dry, correct?

5 A. Correct.

6 Q. Did you become aware, Mr. Sitzman, that later
7 in 2009 -- well, first of all, you received
8 notification from Tonawanda Coke that they
9 installed the baffles in quench tower number 2,
10 correct?

11 A. Yes.

12 Q. All right. And did you become aware later
13 in 2009 that EPA was considering issuing a notice
14 of violation for baffles in both quench towers?

15 A. I didn't know that till I saw it.

16 Q. You didn't know that they were planning on
17 issuing this notice of violation?

18 A. Right.

19 Q. At the time -- do you recall when that was?

20 A. I don't remember the date of EPA's notice of
21 violation.

22 Q. All right. May I please have 000.08, in
23 evidence.

24 I'm going to ask you to take a look at this
25 document, Mr. Sitzman, and it is already in

1 evidence, but ask if -- and we are -- I would be
2 happy to scroll through to the additional pages,
3 but does this refresh your recollection that EPA's
4 notice of violation regarding quench towers in
5 two -- regarding baffles in both of the quench
6 towers, was issued on December 7th, 2009?

7 A. Correct. It doesn't say the baffles on this
8 page, but --

9 Q. I understand. But does it now refresh your
10 memory?

11 A. I'll take your word for it that that's what it
12 refers to later in the document.

13 Q. Now, is it your testimony that you -- until you
14 were notified that this had already been issued,
15 there had been no discussions between you and EPA
16 about the background on baffles in these quench
17 towers at Tonawanda Coke?

18 A. You know, EPA and DEC were participating in
19 joint enforcement, and it had been, as far as I
20 know, one of the first times this was ever done.
21 So there were lots of discussions taking place
22 between the lawyers involved as to who should issue
23 notices of violation and who should take lead on
24 certain portions of the enforcement and how that
25 should all work. And I do know that there was some

1 glitches throughout the process.

2 Q. All right. My question was: Do you recall --
3 do you recall having any conversation with the
4 folks at EPA about the issuance of this notice of
5 violation concerning the baffles in the quench
6 towers?

7 A. I recall at some point telling EPA that, you
8 know, we found out that there was an exemption for
9 the one quench tower and we would only -- we only
10 issued a notice of violation for the one because
11 that exemption existed.

12 Q. And to whom in EPA did you tell this?

13 A. Oh, there was a whole group of them that was --
14 you know, it was the whole air team. It could have
15 been just at a meeting where we all discussed it.

16 Q. Well, I thought I heard you testify that you
17 had told them.

18 A. Yes.

19 Q. All right. And when did that occur?

20 A. That's why I don't know if it was at a meeting
21 or not. I don't remember. At some point we told
22 them, look, there is an exemption we became aware
23 of for this quench tower, and to us it's not a
24 violation to not have baffles, because back in 1984
25 we issued that exemption.

1 Q. And when had you -- is it accurate,
2 Mr. Sitzman, that you had decided to issue your
3 notice of violation regarding the baffles in just
4 one quench tower, quench tower number 2, because at
5 that point someone had reviewed the regulatory
6 file, had identified that there was this
7 preexisting exemption for baffles in quench tower
8 number 1, and determined that the notice would only
9 relate to quench tower number 2, is that correct?

10 A. Correct.

11 Q. When did that happen, that you reviewed this
12 file to determine or to refresh your memory that
13 there was this exemption from 1984?

14 A. I don't -- it was sometime between the April
15 inspection and the date of the NOV, which was in
16 the fall. We either found it in the files, one of
17 my staff, or -- or Mr. Kamholz brought it forward
18 to us and said, you know, we have this exemption
19 for the quench tower.

20 I don't remember how it happened. We became
21 aware of it and agreed that it existed and only
22 sent a notice of violation out for one unit.

23 Q. Now, once you realized or were reminded that
24 there -- that your agency had granted this
25 exemption, did you initiate a process to reopen

1 this facility's permit and to revise that condition
2 as required by Condition 20 in the permit?

3 A. No. Because the permit was on -- already
4 extended. The permit had already been expired, and
5 it was extended, and we were waiting -- all these
6 issues were going on, this inspection occurred, and
7 the decision was made in our agency to wait until
8 all that concluded so we could write an accurate
9 permit of the current conditions at the facility
10 and the current requirements, and have a final
11 permit that we could move forward with in the
12 future.

13 Q. So you then decided -- once you learned that
14 EPA was considering or had issued this notice of
15 violation regarding baffles in both quench towers,
16 you then spoke to EPA and told them, hey, wait a
17 minute, there is an exemption for this for the
18 baffles in quench tower number 1?

19 A. At some point, you know, us and EPA had that
20 conversation, I recollect. Yes.

21 Q. And what did EPA say to you?

22 A. See, I don't remember if that discussion was
23 before or after they issued the NOV.

24 Q. All right.

25 A. The permit did say both -- both towers needed

1 baffles. If EPA just relied on that, then that's
2 what they did their NOV on.

3 Q. But if I understand your testimony correctly --
4 and I don't want to get it wrong -- it's your best
5 recollection that some time after DEC had issued
6 its notice of violation for these baffles in quench
7 tower number 2 -- some time after that you had a
8 conversation with someone in EPA and told them,
9 hey, there's an exemption for baffles in quench
10 tower number 1.

11 MR. MANGO: Objection, your Honor, asked
12 and answered. We're recovering the same ground
13 here.

14 THE COURT: No. Overruled. You may
15 answer.

16 THE WITNESS: Yes.

17 BY MR. LINSIN:

18 Q. All right. But you don't remember who you had
19 the conversation with?

20 A. We had many meetings about this facility.

21 Q. You don't remember when this conversation about
22 the baffles occurred, is that your testimony?

23 A. Correct.

24 Q. On December 30th, 2009 -- we can take this
25 down, please -- you had a conversation with Mr. Ken

1 Eng, a telephone conversation, didn't you?

2 A. Okay. Yes.

3 Q. Well, do you recall -- Mr. Sitzman, I don't
4 want to suggest an answer to you. Let me put it
5 this way: Do you remember having a conversation
6 with Ken Eng, who was then the chief of the Air
7 Branch for EPA's Region 2? Do you recall that?

8 A. I've had many conversations with Mr. Eng, yes.

9 Q. But that wasn't what I asked you. My question,
10 Mr. Sitzman, is: Do you remember having a
11 conversation with Mr. Eng on December 30th, 2009,
12 regarding the Tonawanda Coke facility?

13 A. Not on that specific date, no.

14 Q. May I please have Government's Exhibit 3560.64?
15 For identification, I'm sorry. Now, if we could
16 enlarge just the center of the exhibit.

17 Now, what I'm going ask you to do, sir, is --
18 let's enlarge that, please. Go back, please, to
19 the -- yeah.

20 Take note, please, of the date that appears at
21 the top right-hand corner. And then let's go to
22 the enlarged portion. I want you to read this,
23 please, Mr. Sitzman, to yourself, and then I have a
24 couple of questions for you.

25 A. Okay.

1 Q. All right. Can we take this down, please?

2 Now, do you now remember having a conversation
3 with Mr. Eng on December 30th, 2009, regarding the
4 baffles at the Tonawanda Coke facility?

5 A. Yes.

6 Q. And did you advise Mr. Eng then that there was
7 this exemption for the backup quench station,
8 number 1, at the Tonawanda Coke facility?

9 A. I may have. I didn't write it in my notes. I
10 just noted in my phone log that we had a
11 conversation about the lack of baffles in the
12 backup quench station.

13 Q. Quench tower number 1, right?

14 A. Quench tower number 1, yes.

15 Q. But your testimony is you're not sure whether
16 you said that to Mr. Eng then?

17 A. I already testified I don't know when we had
18 the conversation about, you know, the difference
19 between 1 and 2 requiring baffles and the exemption
20 in 1984.

21 Q. Do you recall what you discussed with Mr. Eng
22 on December 30th, 2009, regarding the Tonawanda
23 Coke facility?

24 A. Only what I wrote down there, that we discussed
25 the lack of baffles in quench station number 1.

1 Q. Did you ask him to rescind EPA's NOV for --
2 that required the installation of baffles in both
3 quench towers?

4 A. That wouldn't be my call.

5 Q. This was a cooperative enforcement effort,
6 correct?

7 A. Correct.

8 Q. Didn't you have a responsibility to advise
9 Mr. Eng that this exemption existed in DEC's
10 regulatory files?

11 MR. MANGO: Objection, your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: I think I already stated
14 that, yes, at some point we advised them that this
15 exemption existed.

16 BY MR. LINSIN:

17 Q. But you didn't request that they revise their
18 notice of violation?

19 A. That would be -- no.

20 Q. Now, at the conclusion of your direct
21 testimony, Mr. Sitzman, you were asked a question
22 that I took down as follows: Based upon the
23 information that you learned regarding the
24 pressure-relief valve at the Tonawanda Coke
25 facility during your April 2009 inspection -- that

1 was the premise of the question. Then you were
2 asked a number of questions about whether it should
3 have been included in the Title V permit, whether
4 the failure to include it was a violation of the
5 permit, et cetera. Do you recall those?

6 A. Yes.

7 Q. Isn't it true, Mr. Sitzman, that everything you
8 know about the existence of that pressure-relief
9 valve on the coke oven gas line at Tonawanda Coke
10 facility -- everything you know about that
11 pressure-relief valve now is precisely what you
12 knew during the closeout meeting of the April 2009
13 inspection?

14 A. No.

15 Q. You've learned additional information regarding
16 that valve since the --

17 A. Yes.

18 Q. What additional information have you learned?

19 A. I learned that valve has been removed, new
20 installed, and a flare installed to combust the
21 emissions.

22 Q. Let me rephrase the question then. Everything
23 you know about the operation of that
24 pressure-relief valve prior to April 2009 --
25 everything you know about how that valve operated

1 before April 2009, everything you know now is what
2 you knew at the end of your April 2009 inspection,
3 isn't that correct?

4 A. Yes.

5 MR. LINSIN: I have no further questions,
6 your Honor.

7 THE COURT: Okay, Mr. Linsin. Thank you.

8 Okay. Ladies and gentlemen, what we will do,
9 we're going to break for the day. We're going to
10 send you home. Ask you to please keep your minds
11 open. Be safe going home, safe coming back
12 tomorrow.

13 Don't do any independent research. Keep in
14 mind the importance of this case to both sides. We
15 will resume tomorrow at approximately 9:30 and with
16 cross-examination starting by Mr. Personius with
17 Mr. Sitzman. And we'll see you tomorrow, healthy
18 and happy and raring to go for a Tuesday, at what
19 time?

20 THE JURY: 9:30.

21 MR. LINSIN: Okay. Thank you. Appreciate
22 it.

23 (Jury excused from the courtroom).

24 THE COURT: Okay. Mr. Sitzman, you can
25 step down. We'll see everybody here about

1 9:30 tomorrow.

2 MR. LINSIN: Thank you, your Honor.

3 MR. MANGO: Yes, your Honor.

4 THE COURT: Okay. Thank you very much.

5 * * * * * *

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a
Correct transcription of the proceedings
Recorded by me in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.